IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 73

UNITED STATES OF AMERICA,

Appellant,

—v.—

STATE OF MISSISSIPPI; ROSS R. BARNETT, JOE T. PATTERSON, HEBER A. LADNER, as members of the MISSISSIPPI STATE BOARD OF ELECTION COMMISSIONERS; H. K. WHITTINGTON, Circuit Clerk and Registrar of Amite County; MRS. PAULINE EASLEY, Circuit Clerk and Registrar of Claiborne County; J. W. SMITH, Circuit Clerk and Registrar of Coahoma County; MRS. MARTHA TURNER LAMB, Circuit Clerk and Registrar of Le Flore County; T. E. WIGGINS, Circuit Clerk and Registrar of Lowndes County; WENDELL R. HOLMES, Circuit Clerk and Registrar of Pike County,

Appellees.

RESTRICTIONS ON NEGRO VOTING IN MISSISSIPPI HISTORY

APPENDIX TO THE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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Restrictions on Negro Voting in Mississippi History

by

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I.

Negroes were first imported to Mississippi in 1719. They were brought as slaves, as property, not as people. Ever since that date, the Negro has struggled to gain the right and privilege to vote. In the course of over two centuries, and under many different flags, his efforts have been thwarted. Actually, the Negro in Mississippi never had the right to vote in an election of any consequence until 1869, seventy-one years after the State first came under the jurisdiction of the United States.

The Negro was not permitted to vote while Mississippi was under French Dominion from 1699-1763. The British excluded the free Negro, the slave, and the Indian from franchise during their tenure of control of the territory, which lasted, from 1763 to 1779. The Spanish Dominion over Mississippi began again, in 1779. From that date until Spain lost control of the area to the United States, in 1798, the Negro, even if a free man, could not exercise the right of the ballot. The remainder of this analysis will deal with the Negroes' right to vote while Mississippi was a part of the Dominion of the United States, as the Mississippi Territory from 1798-1817, and as a member of the Union of the United States of America from 1817 and thereafter.

An analysis of the Negroes' right to vote in the United States, must begin with the laws of 1787. These laws, which evidently must have been the basis of suffrage in a number of states as well as Mississippi, show that to entitle a person to vote under our first suffrage law he must have been 1. Free, 2. Male, 3. of full age (presumably

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21 years), 4. A citizen of the United States and a resident of the territory, or a resident for two years in the territory, and 5. A Freeholder of fifty acres of land in the district.[1] In the summer of 1799 there was an election in the Mississippi Territory to choose a committee to fight for governmental reform. A request was made at the same time, to Congress, to grant the Mississippi Territory the second stage of being a territory, which would bring more popular rule. Congress, in 1800, approved the Territory's authority to have an assembly consisting of a House of Representatives of 9 members elected by the people and a legislative council of 5 members chosen by Congress from a list of names submitted to it by the Territorial House. In these elections, and in the election of 1799, Governor Sargent did not permit Free Negroes to vote.

The first voting legislation passed in Mississippi was for the municipal election to be held in Natchez in 1803. The "freeholders, landholders, and householders" of the City of Natchez were authorized by a majority vote to elect municipal officers.[2] The most notable thing about this, the first legislative act of Mississippi conferring the right of suffrage, is that no distinction was made because of age, color, or sex.

After the removal of Sargent as Territorial Governor, there was a campaign among the democratic elements in the Territory to abolish the traditional property qualification for voting. A petition was sent to Congress in 1807. In 1808, George Poindexter, who the year before had been elected the Congressional Delegate from the Territory, served as Chairman of a Committee to study the question. The end result was that the property qualification was not dropped. By an Act of Congress, approved January 9,

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[1] R. H. Thompson, "Suffrage in Mississippi." *Publications of the Mississippi Historical Society*, 1 (1898) p. 26.

[2] *Id.*, p. 27.

1808, the organic law so far as it related to the Mississippi Territory, was amended so as to provide that every free white male person in the Mississippi Territory, above the age of twenty-one years, having been a citizen of the United States, and resident in the said Territory one year next preceding an election of Representatives, and who has a legal or equitable title to a tract of land from the United States of the quantity of fifty acres or who may hold in his own right a town lot of value of one hundred dollars within said Territory, shall be entitled to vote for Representatives to the General Assembly of said Territory.[3] In addition, all voters had to have their taxes paid not less than six months prior to the election. Though the qualifications necessary to exercise the suffrage were actually stiffened in comparison to the laws of July 13, 1787, the amount of power placed in the hands of voters was increased. The election of the Territorial Delegate to Congress was for the first time placed in the hands of the voters. Too, the people could now elect twelve Members to the Territorial House of Representatives. However, it was this Act of Congress, passed in 1808, which first introduced the color line in Mississippi voting laws. Only free white male persons of age could vote. The few free Negroes who had struggled so hard to win their freedom, were denied the right to use the ballot box to show their preference.

In some Mississippi Towns, however, the freeholders and householders were still empowered to vote without reference to sex and all without reference and regard to age or color. In January, 1814, the Legislature restricted the suffrage in municipalities to landholders, freeholders, and householders. Of course, it is not known whether any free Negroes ever voted, or even attempted to vote in these

[3] *Id.*, p. 28.

elections. On their face, however, laws governing municipal elections made no restrictions because of the color of an individual's skin.

The organic law of the Mississippi Territory was again amended in 1814. On April 25, of that year, by an Act of Congress, the law regarding suffrage was changed to read: "Each and every free white male person, being a citizen of the United States, who shall have attained the age of 21 years, and who shall have resided one year in said Territory previous to any general election, and be at the time of any such election a resident thereof, shall be entitled to vote . . . ".[4] Again, it was Congress which laid down the color bar on voting. However, public opinion of the time, as expressed in the newspapers, supported the color restrictions made by Congress. "A Citizen," commenting on the Constitution in the *Washington Republican and Natchez Intelligencer* states that "all free white males liable to taxation or to militia duty, should be entitled to vote for representatives."[5] Color restrictions remained in elections for Representatives to the Territorial Assembly and to Congress. This was not the case in municipal elections.

The Territory had many different municipal election laws governing different towns. One law governing municipal elections passed in 1816 stated that:

> "No person shall vote at any election . . . for said town, unless he be 21 years of age, and shall have been a freeholder in said town, or tenant of a house or separate roof at least 6 months previous to any election and shall have paid a county, territorial or corporation tax, nor unless he be a citizen of the United States, or shall have resided within that part of West Florida

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[4] *Id.*, p. 29.

[5] *The Washington Republican and Natchez Intelligencer*, July 6, 1814, p. 1.

now in the possession of the United States, at the time of the change of government in that Province."[6]

This particular law had no restrictions on color or race attached to the prerequisites needed to qualify for the suffrage. There is still question whether or not in fact, Negroes were allowed to vote. Other municipal and county election laws set such qualifications for the franchise. The community of Huntsville required that one be free, white, and twenty-one years of age in order to be eligible to vote. Adams County in 1816 had qualifications restricting the vote to "(that) every white fre male person, being a citizen of the county of Adams, who shall have arrived at the age of twenty-one years, and resided in the said county twelve months previous to the said election, shall be admitted to vote thereof, and none other."[7] It is easy to see then, that there was no set rule in municipal elections as to whether or not Negroes would be allowed to vote. This privilege and the restrictions placed upon it, all depended on the particular locality.

The Territorial Assembly authorized a census of the Territory in 1816. The results of the census were as follows: The Territory contains 75,512 souls; of whom 45,085 were free white persons: 366 free people of color; and 30,061 slaves.[8] The census was taken because the people of the Territory were ready to hold a convention, form a Constitution, and seek admission to the union as a state, equal in standing to the other members. The Assembly passed a bill "To enable the people of the western part of the Mississippi Territory to form a Constitution and State

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[6] Thompson, *loc. cit.*

[7] *The Washington Republican and Natchez Intelligencer*, Jan. 1, 1817.

[8] *The Washington Republican and Natchez Intelligencer*, Jan. 22, 1817.

Government, and for the admission of such state into the union on an equal footing with the original States." Section 3 of the Bill established the qualifications necessary to be an elector in the choosing of the Representatives to the Convention. Section 3 states,

> "And be it further enacted, that all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said Territory at least one year previous to the time of holding the election, and shall have paid a county or territorial tax, and all persons having, in other respects, the legal qualifications to vote for Representatives in the General Assembly of the said Territory, be, and they hereby are, authorized to choose Representatives to form a Convention . . ." [9]

Another version changes the reading slightly, it is a little more specific and doesn't leave the question of "having, in other respects, the legal qualifications to vote" aloft. It adds on an additional group of those qualified and reads

> ". . . and all persons holding lands by purchase in said Territory, and residing therein on the day of the election, be and they hereby are authorized to choose Representatives to form a Convention, who shall be appointed amongst the respective counties in the said Territory, according to the free white population thereof . . ." [10]

The Negro, even if free, was denied the right to vote. He was denied any representation in that body which was given the power to formulate the organic law of the state. He

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[9] *Ibid.*

[10] *The Washington Republican and Natchez Intelligencer*, Feb. 19, 1817.

was still considered as property, or if as a person, one without the rights of citizenship, even if he had earned them, because he was born with a colored skin. Section 4 of the aforementioned Bill gave the Convention broad powers,

> "And if it be determined to be expedient, then the Convention shall be, and they are hereby authorized to proceed to form a Constitution: Provided, That the said Constitution shall be Republican and not repugnant to the principles of the Constitution of the United States; which Constitution so formed shall be presented to the Congress of the United States at their next session, the same shall be valid as the Constitution, or form of government to be erected in the Territory aforesaid." [11]

A body of white men would elect Delegates to a Convention of white men, which would represent the views of the white man. This body would shape and form the organic law which would apply to all men, colored and white. It was a body which would create a government of white men over all.

The Hon. William Lattimore questioned whether the will of the people would be indicated by the Convention. After ascertaining that the counties that would meet comprised only a fifth part of the population of the Territory, he concluded that only a tenth part of all the free males of the Territory would bear any weight as being represented in the Convention. He remarked that whatever be the general will of the people in relation to this question (of Statehood), it is not satisfactorily indicated by what either the Legislature or the Convention have expressed.[12] At least there

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[11] *Ibid.*

[12] *The Washington Republican and Natchez Intelligencer,* April 16, 1817.

were some, who did question the unrepresentative and discriminatory manner in which the whole affair was being handled.

George Poindexter was eventually appointed as Chairman of a Committee of 21 Members charged with drafting a State Constitution. The question of who shall have the right of suffrage was important in their deliberations. The Constitution, when completed, had a very conservative suffrage provision. However, this was not done before some liberal views had been expressed on the matter. Tho. B. Reese, a Delegate from Adams County, expressed to his constituency through the newspaper the following:

> "It is in the Constitution, that the great principle of the elective right, or as it is called the elective franchise, is to be established. This is one of the most interesting questions that can come before a free and enlightened people. The abuse of it produces anarchy and the entire absense of it produces, despotism. The undue restriction of it does injustice to many persons, who bear the burdens and fight the battles of the country. I think, therefore, the rights of the Constitution (?) in this respect, ought to be as liberal and extensive as they could be (?) and not qualifications of property . . . . when a man has the competence (?), and is, in truth, a citizen, are contrary to the plainest and most fundamental principles of the social compact. I should therefore carry with me to the Convention, a determination to secure to every citizen, who had the proper age and had contributed, either by services or money to the support and defense of the country, the right to have a voice, by his representatives in making the laws that are to govern him." [13]

[13] *The Washington Republican and Natchez Intelligencer*, May 28, 1817.

These, however, were not the views of the majority of the Delegates who framed the Constitution of 1817. Several of the Delegates argued that the establishment of some of the principles of representation as proposed by Mr. Poindexter were adverse to the great doctrines of representative democracy—that it was a complete acknowledgment of the right of the minority to govern the majority. . . .[14] In the end, these views lost out to those of Poindexter, which were included in the final Constitution signed on August 15, 1817.

The Mississippi Constitution of 1817 contained rather conservative restrictions on the elective franchise. Article 3 Section 1 established the qualifications that an individual must have in order to be able to vote. Suffrage was limited to

> "Every free white male person of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in the State one year preceding an election and the last six months within the county, city or town in which he offers to vote, and shall be enrolled in the militia thereof, except exempted by law from military service; or having the aforesaid qualifications of citizenship and residence, shall have paid a State or county tax, shall be deemed a qualified elector: no elector shall be entitled to vote except in the county, city or town (entitled to separate representation) in which he may reside at the time of election."[15]

The first Constitution of the State of Mississippi thereby denied the ballot to the free Negro because of the color of

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[14] *The Washington Republican and Natchez Intelligencer*, July 26, 1817.

[15] *Mississippi Constitution of 1817* as printed in *The Washington Republican and Natchez Intelligencer*, August 23, 1817.

his skin. Even if he could meet all of the other qualifications needed to become an elector, his color barred him from participation at the polls.

This restriction of the elective franchise to free white persons seems on its face to contradict the principles of the Declaration of Rights as established in Article 1 of the Constitution. Article 1 Section 1 of the Declaration of Rights states

> "That all free men when they form a social compact are equal in rights; and that no man or set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services." [16]

The Conclusion of the Declaration of Rights of Article 1 of the Constitution of 1817 demonstrates the high regard with which these principles were considered. The purpose of the Declaration is

> "To guard against transgressions of the high powers herein delegated, We Declare, that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate, and that all laws contrary thereto, or to the following provisions, shall be void." [17]

The idea of granting equal rights to all free men was a highly regarded principle. The limitation of the franchise to all free white men does indeed appear to violate this principle. The enumeration of the census as authorized by the Legislature does show that there were freemen or free persons of color. But the time was not ripe to consider them

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[16] *Ibid.*

[17] *Ibid.*

citizens entitled to the rights thereof, even if they were free, and even if they were so few in numbers.

The Convention further restricted the suffrage in Article 9 which establishes the general powers. Section 5 of Article 9, sets forth these limitations as follows:

> "Laws shall be made to exclude from office, and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper conduct." [18]

No legislation was passed to put these restrictions into effect until a few years later.

On December 10, 1817, Mississippi was formally admitted to the Union as a State, equal in status to those admitted earlier. The Mississippi State Legislature in 1822 finally enacted laws to put into effect the Article 9 restrictions of the 1817 Constitution. The 1822 legislation states:

> "No person shall vote at any election whatever in this State who shall have been convicted by the verdict of a jury, and the final judgment or sentence of a court of competent jurisdiction, of bribery, perjury, forgery, or other high crime or misdemeanor, unless the person so convicted, shall receive a full pardon for such offense." [19]

Many of the municipalities had election laws which were not as restrictive as those established by the State. In most

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[18] *Ibid.*

[19] Thompson, *op. cit.*, p. 32.

towns from 1818 to 1830, municipal elections were open to "free white male citizens of the town above the age of 21 years." In many cases there were property qualifications and in order to be eligible to vote in municipal elections, one had to be a freeholder, landholder or householder, who had paid a tax. Sometimes a residence requirement of three or six months was established. However, an analysis of all this will show that under the Constitution of 1817, "color" was not a qualification or a disqualification in municipal elections.[20] In eight of the towns of the State legislated upon by the State Legislature to establish municipal election laws, viz: Shieldsborough, Greenville, Holmesville, Columbus, Vicksburg, Rodney Raymond, and Washington; color or lack of it, was not a qualification needed to gain the franchise. Of course, slaves were not freeholders or citizens, but free Negroes were frequent freeholders and in some communities were regarded by many as citizens.[21] As to how many free Negroes actually did vote in these elections, one cannot say. One can only accept the following statement of Franklin L. Riley, made in the Publication of the Mississippi Historical Society in 1898:

> "Free persons of color, however, as I learn, did claim the right in some of these towns and it was generally conceded by those of the white men whose interest was on the side of the claimant's political preference, but was generally denied by the opposition, and it is donbtful if a negro ever voted in any of them until after the war." [22]

In 1830, tribal government was abolished, and the Indians were defined as citizens. They were placed under State

[20] *Id.*, p. 34.

[21] *Ibid.*

[22] *Id.*, p. 35.

law. Even the chiefs themselves had to be elected. Presumably, the Indians were allowed to vote in other elections, too.

A popular referendum held in August, 1831, established the fact that the people wanted a Constitutional Convention. The Legislature ordered in December, 1831, that an election be held in August, 1832, for Delegates. The Constitutional Convention, presided over by P. Rutilius R. Pray, a judge of the State Supreme Court, assembled on September 10. The Constitution completed on October 26, 1832, was the most democratic in the State's history.[23] It was as good as a vote for Jackson, so closely did it follow the political ideas of the President.[24]

The Constitution of 1832 extended the franchise to many who had not had it before. There were few states which had as liberal voting requirements as Mississippi. Property ownership was no longer either a direct or indirect requirement for voting. However, free Negroes were still denied the right to vote. The suffrage provision of the Constitution stated that

> "Every free white male person of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in this State one year next preceding an election, and the last four months within the county, city, or town in which he offers to vote, shall be deemed a qualified elector . . ." [25]

Another section of the Constitution, like that of 1817, excluded those who had been convicted for certain crimes from the suffrage.

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[23] John K. Bettersworth, *Mississippi: A History* (Austin, Texas: The Stack Co., 1959), p. 178.

[24] *Ibid.*

[25] *Mississippi Constitution of 1832.*

> "Every person shall be disqualified from holding an office or place of honor or profit under the authority of this State, who shall be convicted of having given or offered any bribe to procure his election. Laws shall be made to exclude from office and from suffrage those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors." [26]

The organic law of the State, though considerably liberalized, still did not treat the free male Negro as a citizen. The Constitution did have one major effect on the Negro population of the State. It forbade bringing slaves into the State for sale. The color line remained as a guard to protect the polls. Again, the principles stated in the section on individual rights were contradicted by the section on the elective franchise.

The State Legislature on March 2, 1833, passed legislation putting into effect the constitutional disqualification from the suffrage for conviction of certain kinds of crimes. This legislation said that

> "No person shall vote at any election whatever in this State, who shall have been convicted by the verdict of a jury and the final judgment of a court of competent jurisdiction, of bribery, perjury, forgery, or other high crimes or misdemeanors, unless the person so convicted shall have received a full pardon for such offense." [27]

The State Legislature also passed the laws governing the various municipal elections. In a majority of cases it was provided that the voter should be a qualified elector of the State, or state and county, and that he should have resided within the municipal limits a specified period of time. This length of time varied from ten days, the shortest, to two

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[26] *Ibid.*

[27] Thompson, *op. cit.*, quoting the act of the Mississippi Legislature of March 2, 1833.

years, the longest. However, there were communities where color was not a disqualification for suffrage in municipal elections. Several of these, such as Jackson or Seven Pines, prescribed a two years' residence requirement. The principal purpose in most cases for the long residence requirement was to exclude the transient Negro vote.[28] The Legislatures of the period did not feel that they were bound to require all of the constitutional qualifications as essential of municipal suffrage. For this reason, the qualifications necessary for municipal suffrage varied widely from city to city. The State Legislature first required a registration of voters in an Act passed in 1839. It applied to municipal elections and only in Vicksburg.

The foregoing Acts summarize the pre-Civil War voting laws in Mississippi. The Negro, even if a free male person, was not considered a citizen. He did not have either the right or the privilege of the franchise. He had no legal standing under the Constitution and laws of the State of Mississippi.

II.

The Civil War ended in April 1865. With the fall of the Confederacy, the end of an era had come. A way of life had been destroyed by force of arms. A Provisional-Governor, Sharkey, was in control of the State. A new Constitution had to be written; a new government had to be formed. The tenor and attitudes of this government would have to contend with the many new problems which had arisen. Loyalty to the Federal Union and to its victorious cause was demanded. Such a transition wouldn't be easy. Yet it was one with which the Mississippian and his government must deal.

All through the war and after, the Mississippian had kept his previously held attitude with regard to Negro suffrage.

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[28] Thompson, *op. cit.*, p. 39.

Benjamin Humphreys, later that year, after being elected Governor of Mississippi, made the following statements in his inaugural address. They exemplify this attitude. Humphreys said,

> "Several hundred thousand of the negro race, unfitted for political equality with the white race, have been turned loose upon society; and in the guardianship she may assume over this race she must deal justly with them and protect them in all their rights of person and property. The highest degree of elevation in the scale of civilization to which they are capable, morally and intellectually, must be secured to them by their education and religious training, but they cannot be admitted to political or social equality with the white race." [29]

The transition of thought demanded, was not forthcoming on the part of the native white citizens of Mississippi. Meanwhile, the freedman pressed for the rights that he considered due him. In June, 1865, before the all-white election of Delegates to the Constitutional Convention, a number of freedmen gathered in a mass meeting at Vicksburg and drew up resolutions condemning the exclusion of "loyal citizens" from the election, and appealing to Congress to refuse readmission to Mississippi until she voluntarily enfranchised the Freedman.[30] Provisional-Governor Sharkey on July 1, called for elections to a State Convention to be held in August. The right to vote in the election would be limited to white male citizens. At the same time, Sharkey reappointed all local officials.

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[29] The Southern Historical Publication Society, *The South in the Building of the Nation*, Vol. II of *A History of the Southern States* (Richmond, Va., 1909), p. 430.

[30] Vernon Lane Wharton, *The Negro in Mississippi 1865-1890* (Chapel Hill: University of North Carolina Press, 1947), p. 140.

The Constitutional Convention of 1865 convened in April. One of the questions to be discussed by the Convention was Negro suffrage. President Johnson had sent a telegram to Governor Sharkey suggesting that it might be expedient to extend the franchise to all freedmen "who can read the Constitution of the United States, and write their names, and also to those who own real estate valued at two hundred and fifty dollars, and pay taxes thereon." [31] The President expressed the hope that the Convention would confer the suffrage upon the Negroes as a means of foiling the policy of the radicals, who he said, were then pressing for Negro suffrage.[32] However, the members of the convention did not wish to grant that right.

The Convention did not draft an entirely new Constitution. It repudiated secession and all the laws of the Confederacy. In addition, the Convention abolished slavery and guaranteed certain civil rights to Negroes. The sentiment of the Convention was in favor of acquiescing to Emancipation, and leaving the status of the Negro as a citizen to be determined by each state.[33] It was to be the duty of the new Legislature to deal with the problems created by the Emancipation of the Negro from his slavery.

The Mississippi Legislature of 1866 was elected in the old manner, with Negroes not voting. This Legislature enacted a code of Negro legal rights. The code was the so-called "Black Codes" and was designed to stop vagrancy and force the freedman to go to work. At the same time, the new Legislature refused to ratify the Thirteenth Amend-

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[31] Alfred Holt Stone, "Mississippi's Constitution and Statutes in Reference to Freedmen, and Their Alleged Relation to the Reconstruction Acts and War Amendments," *Publications of the Mississippi Historical Society*, IV (1901), p. 152.

[32] Frank Johnston, "Suffrage and Reconstruction in Mississippi," *Publications of the Mississippi Historical Society*, VI (1902), p. 143.

[33] The Southern Historical Publication Society, *op. cit.*, p. 429.

ment to the Constitution of the United States in light of what the Convention of 1865 had done in repudiating slavery.

During 1866, however, the Radicals in Congress pushed through a Civil Rights Bill and passed the Fourteenth Amendment. This Amendment undertook to guarantee the vote to the Negro and to disfranchise a large number of former Confederates. The Second, Third, and Fifth Sections of this Amendment were written for this purpose. They state the following:

> "Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or Members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
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> "Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an Executive or Judicial Officer of any State, to support the Constitution of

the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." [34]

The Congress at that time unofficially made ratification of this Amendment a requirement for the readmission of a State to the Union.[35]

At a special session of the Mississippi State Legislature, 1866-1867, however, the Representatives and Senators refused to ratify the Fourteenth Amendment on the ground that "the voting class should not be swollen by sudden and large infusions of ignorance and prejudice." [36] How much actual ignorance would be added to the electorate is open to question. One can only accept the statement made by a Legislator, who was familiar with the ante-bellum Legislature. He said, "So great was the illiteracy in some sections of the State that many of their Representatives before the reconstruction—or rather rebellion, which is the proper term to use—could not sign their names to the Legislative payrolls except by a cross." [37]

In 1867, Congress passed the Reconstruction Act requiring each Southern State, before re-admission to the United States, to frame a new Constitution granting Negro suffrage

[34] The Fourteenth Amendment to the Constitution of the United States, adopted July 21, 1868.

[35] Betterworth, *op. cit.*, p. 318.

[36] The Southern Historical Publication Society, *op. cit.*, p. 431.

[37] Hiram W. Lewis, Watertown, South Dakota, 10 April 1900, letter to James W. Garner, Illinois Technological Institute, File of letters to James W. Garner, Department of Archives and History, Jackson, Miss.

and to ratify the Fourteenth Amendment.[38] A large portion of the white adult male population was disfranchised by the Fourteenth Amendment because of participation in the War. July, 1867, brought efforts in Mississippi to register voters under the Congressional plan. The registration of voters under the Reconstruction Acts was the duty of the military commander. Under the order of General E. O. C. Ord, military Commander of Mississippi, an election was to be held to elect Delegates to a Constitutional Convention to begin January 9, 1868. The Delegates were to be elected by the male citizens of the State, twenty-one years old and upwards, "of whatever race, color or previous condition of servitude," residents for one year, and not disfranchised.[39]

Registration of voters began in July. Many of the Negroes entered enthusiastically into the political activity.[40] The efforts made by elements of the white population to prevent the Negroes from registering were general enough to cause Ord to issue a warning, but such efforts seem to have had little effect. To the registration offices, as later to the polls, the Negroes generally came in large groups. Many whites were disqualified, while the Negroes were invariably allowed to register. As the registration proceeded, it was shown in September that 60,167 Negroes and 46,636 white men had been allowed to qualify as voters. Thirty-three of the State's sixty-one counties had majorities of Negro registrants. These results of the registration came as a distinct shock to the white citizens, and added to the number of those who were determined to stand to the last against Negro suffrage.[41]

In November, an election was held to decide whether the people wished to proceed with a Constitutional Convention

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[38] Act of March 3, 1867. c 153, 14 Stat. 428.

[39] The Southern Historical Publication Society, *op. cit.*, p. 431.

[40] Wharton, *op. cit.*, p. 144.

[41] *Id.*, p. 146.

or to remain under military rule. As might be expected, the overwhelming majority of the registered voters favored the calling of the Constitutional Convention. The result was a vote of 76,016 in favor of the Convention and of only 6,277 against. The Constitutional Convention assembled on January 7, 1868. The Convention known as the "Black and Tan Convention" had seventeen Negroes among its hundred members. Of its total membership, only nineteen of the Delegates were Democrats. The Constitution written by this body was quite democratic and met all of the demands required by Congress for re-admission of Mississippi to the Union.

The Constitution adopted by the Convention had broad provisions for the protection of individual rights. Article I of the Constitution which stated these rights contained the following Sections of guarantee:

> "Section 1. All persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi.
>
> "Section 2. No person shall be deprived of life, liberty, or property, except by due process of law.
>
> "Section 6. The right of the people to peaceably assemble and petition the government on any subjects, shall never be impaired.
>
> "Section 18. No property or educational requirement shall ever be required for any person to become an elector."[42]

The guarantees provided for were the most sweeping in the State's history. For the first time, all men, whether white or black, were to have constitutional guarantees. Whether

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[42] Mississippi Constitution of 1868 printed in the *Journal of the Proceedings in the Constitutional Convention of the State of Mississippi 1868* (Jackson: E. Stafford, Printer, 1871), Article 1.

one was white or black, he was to have legal rights. The color line was being broken.

The article on franchise, Article VI, adopted by the Constitutional Convention of 1868, was probably the most important and most publicly controversial issue before the body. These provisions on the franchise were adopted:

"Section 1. All elections by the people shall be by ballot.

"Section 2. All male inhabitants of this State, except idiots and insane persons, and Indians, not taxed, citizens of the United States, or naturalized, twenty-one years old and upwards, who have resided in this State six months, and in the county one month next preceding the day of election, at which said inhabitant offers to vote, and who are duly registered according to the requirements of Section 3 of this Article, and who are not disqualified by reason of any crime, are declared to be qualified electors.

"Section 3. The Legislature shall provide for the registration of all persons entitled to vote at any election, and all persons entitled to register shall take and subscribe the following oath or affirmation: I, ..., do solemnly swear (or affirm), in the presence of Almighty God, that I am twenty-one years old; and I have resided in this State six months, and in .... county one month; that I will faithfully support and obey the Constitution and laws of the United States, and of the State of Mississippi, and will bear true faith and allegiance to the same; that I am not disenfranchised in any of the provisions of the acts known as the Reconstruction Acts of the 39th and 40th Congress; and that I admit the political and civil equality of all men; so help me God;" Providing, that if Congress shall, at any time, remove the disabilities of any persons disenfranchised in the said Reconstruction

Acts of the said 39th and 40th Congress (and the Legislature of this State shall concur therein), then so much of this oath, and so much only, as refers to the said Reconstruction Acts, shall not be required of such person, so pardoned, to entitle him to be registered.

"Section 4. No person shall be eligible to any office of profit of trust, or to any office in the militia of this State, who is not a qualified elector.

"Section 5. No person shall be eligible to any office of profit or trust, civil or military, in this State, who, as a member of the Legislature, voted for the call of the Convention that passed the Ordinance of Secession, or who, as a Delegate to any Convention, voted for or signed any Ordinance of Secession, or who gave voluntary aid, countenance, counsel or encouragement to persons engaged in armed hostility to the United States, or who accepted or attempted to exercise the functions of any office, civil or military, under any authority or pretended government authority, power, or Constitution, within the United States, hostile or inimical thereto, except all persons who aided reconstruction by voting for this Convention, or who have continuously advocated the assembling of this Convention, and shall continuously and in good faith advocate the Acts of the same; but the Legislature may remove such disability; Provided, that nothing in this section, except voting for or signing the Ordinance of Secession shall be so constructed as to exclude from office the private soldier of the late so-called Confederate States Army.

"Section 6. In time of war, insurrection or rebellion, the right to vote at such place, and in such manner as shall be prescribed by law, shall be enjoyed by all persons otherwise entitled thereto, who may be in the actual

> military or naval service of the United States or this State; Provided, Said votes be made to apply in the county or precinct wherein they reside." [43]

The Sections adopted requiring the "test Oath" and the statement by the registrant saying that he believed in the "civil and political equality of all men" were particularly offensive to many whites. After being passed by the members of the Convention, the Constitution was given to the voters of the State for ratification in an election held from June 22 to June 30. The Constitution was defeated by 8,629 votes. Presumably, it was the sections of the franchise article which caused the defeat. It should be noted, however, there was widespread intimidation of the Negroes which assured the defeat of the Republicans and the rejection of the Constitution.

At the same election, new sets of State Legislators and State Officials were chosen. However, since there was no Constitution in existence, they were unable to take office. There were many claims of election fraud, made to the United States Congress with regard to the defeat of the Constitution. These claims caused the Senate and the House of Representatives to undertake investigations of the Mississippi elections of 1868. The reports may be found in the Congressional records of 1869.

On July 13, 1869, President Grant called for another balloting on the Constitution to be held in the following November. There would be more than 100,000 registered Negroes and more than 70,000 registered whites eligible to vote in the election.[43a] In that election, the objectionable portions of the Constitution were submitted separately, and all were defeated. The remainder of the Constitution was overwhelmingly approved. Again, elections to fill the State

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[43] *Id.*, Article VI.

[43a] Wharton, *op. cit.*, p. 157.

offices were held. But this time, the elected officials were able to take their positions.

Mississippi came out of the struggle for a new Constitution with rather liberal voting requirements. The Constitution of 1869 was the first in the history of the State of Mississippi to permit the Negro to vote. Not only was the Negro enfranchised, but he comprised a majority of the electorate of the State. The Negro had entered into politics with an enthusiasm which was rewarded by granting him almost immediately control of the political power of the State.

The Negro had won the early battle of Reconstruction. However, a principal goal of the Mississippi whites in the Reconstruction legislation of 1867 had been the practical re-enslavement of the colored man. Indeed clever laws might assure the dependency of the Negro without placing on the whites many of the paternalistic burdens which had resulted from the old system of slavery.[44] Such actions by the whites had pointed up the difficulty of defining a status for the Negro under the United States Constitution anywhere between slavery and citizenship.[45] The policy of the Federal Government in its reconstruction enactments and amendments to the Constitution was intended to secure the colored man in his rights as a citizen.[46] The Federal power and philosophy of Reconstruction prevailed in this jousting between the State and National Governments. The Mississippi whites' bitter purpose to give the colored man no standing or recognition by which he might have even the semblance of a freedman had been overruled. A former Military Governor of Mississippi commented on the situa-

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[44] H. T. Fisher, Cleveland, Ohio, 21 Dec. 1899, letter to James W. Garner, Illinois Technological Institute, File of letters to James W. Garner, Department of Archives and History, Jackson, Miss.

[45] *Ibid.*

[46] *Ibid.*

tion by saying, "The country was with Congress which was actuated by a double motive; first, distrust of the loyalty of the men lately in arms as secessionists and second, by the conviction that it was their duty to make citizens of the slaves Lincoln had liberated. The ballot is the free man's weapon of defense—the ex-slave was to be armed with it."[47]

Following the adoption of the Constitution of 1869, despite the fact that the colored men comprised the majority of the electorate, the Negroes made no attempt to deprive the white men of their rights. Nevertheless, the white citizens of Mississippi firmly believed that the enfranchisement of the Negro was a mistake, regardless of the treatment that they themselves received. Therefore, the compulsion to remain in the Union and the Reconstruction Acts were unspeakably repulsive to most Southern white men.[49] The powerful conservative leaders, given the existing situation, began an immediate, almost frantic, campaign to bring the Negro voters under the control of the Southern whites.

Mississippi had written a new Constitution which guaranteed the Negro the right to vote, but she had not yet gained readmission to the Union. The Mississippi Legislature had not ratified the Fourteenth Amendment which was considered an essential condition of readmission, nor had it considered the ratification of the Fifteenth Amendment, which had been passed on February 27, 1869, by the Fortieth Congress and had been submitted to the States for ratification. This latter amendment was designed as a

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[47] Adelbert Ames, Lowell, Mass., 17 Jan. 1900, letter to James W. Garner, Illinois Technological Institute, file of letters to James W. Garner, Department of Archives and History, Jackson, Miss.

[48] Dunbar Rowland, *A Mississippi View of Race Relations in the South* (Jackson: Harmon Publishing Co. Printers, 1903) Read before the Alumni Association of the University of Mississippi, June 3, 1902, p. 7.

[49] Adelbert Ames, *loc. cit.*

further guarantee of the rights of the Negro to have the franchise. The Fifteenth Amendment declared that

> "Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> "Section 2. The Congress shall have power to enforce this article by appropriate legislation." [50]

In theory, at least, no State would any longer be able to place limitations on the suffrage which would discriminate against the Negroes. Thus, by the Federal law, the power which the States had possessed from the establishment of the Union, of regulating the great local and domestic subject of the elective franchise, was impaired.[51]

Beginning in 1870, "Carpetbag" control over the government of Mississippi was almost complete. The State Legislature was overwhelmingly Republican. Almost forty of its members were Negroes. The Legislature met on January 11, 1870, and promptly ratified not only the Fourteenth Amendment, but also the Fifteenth Amendment. The Legislature also chose Senators. One of the Senators chosen was Hiram R. Revels, the first Negro to sit in the United States Senate. Mississippi was now eligible for re-admission into the Union.

The Congress on February 17, 1870, passed an act re-admitting Mississippi to the Union. According to the provisions of that Act, certain fundamental conditions had to be met by the State before its representatives would be admitted to Congress. They were the following:

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[50] *Fifteenth Amendment to the Constitution of the United States*, adopted March 30, 1870.

[51] Johnston, *op. cit.*, p. 191.

"And provided further, that the State of Mississippi is admitted to representation in Congress as one of the States of the Union, upon the following fundamental conditions: First, that the constitution of Mississippi shall never be amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized except as a punishment for such crimes as are now felonies at common law, whereof, they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution, prospective in its effects, may be made in regard to the time and place of residence of voters. Second, that it shall never be lawful for the said State to deprive any citizen of the United States, on account of race, color, or previous condition of servitude of the right to hold office under the constitution and laws of said State, or upon any such ground to require of him any other qualification for office than such as are required of all other citizens.[52] (Public Acts of the Forty-First Congress of the United States. Second Session. Chapter XIX February 23, 1870.)

This Act was approved by the President on February 23, and on that date, Mississippi once more became a State, having agreed to respect the established conditions.

The Negroes in the State Legislature sought no special advantages for their race, and in one of their very first acts, they petitioned Congress to remove all political disabilities from the whites. However, the whites were discontent with the Negro rule. The year 1870 saw the or-

[52] George P. Sanger, ed., *Public Acts of the Forty-First Congress of the United States.* Second Session. Chapter XIX. February 23, 1870 (Boston: Little, Brown & Co., 1871), p. 67.

ganization of a number of "White Men's Clubs" throughout the State. Believing that Negro suffrage was "wrong in principle and disastrous in effect", they pledged themselves to labor unceasingly, from year to year, for the restoration of white supremacy in Mississippi and in the United States.[53] The Columbus Democrat advocated the union of these groups in a revitalized Democratic Party, declaring:

> ". . . Its leading ideas are, that white men shall govern That niggers are not rightly entitled to vote, and that when it gets power, niggers will be placed upon the same footing with white minors and who do not vote or hold office . . ."
>
> "Nigger voting, holding office and sitting in the jury box, are all wrong, and against the sentiment of the country. There is nothing more certain to occur than that these outrages upon justice and good government will soon be removed, and the unprincipled men who are now their advocates will sink lower in the social scale than the niggers themselves."[54]

The political line was being drawn solely on the basis of race.

In 1871, came the first elections of local officers under the new Constitution. Many Negroes were chosen as county officers in these elections. However, in the election most of the "white counties" regained control of their own affairs. Racial antagonisms were starting to build. In the face of the decrepitude of the Democratic Party, and of the

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[53] Wharton, *op. cit.*, p. 182.

[54] *Ibid.* Quoting the Columbus *Democrat* from the *Mississippi Weekly Pilot*, Dec. 24, 1870.

certainty of Federal intervention in case of a State-wide movement based on violence, the program to regain solid white supremacy in politics was held in check during 1871, 1872, and 1873. With the great increase of office holding by Negroes after the election of 1873, however, the movement gained new strength. The Democratic party was getting stronger, while the Republican party was being left to the Negro. The great call to the white citizens of the State to unite was being raised on high. The Yazoo City *Banner* declared, "Mississippi is a white man's country, and by the Eternal God we'll rule it." [55] The *Handsboro Democrat* cried out, calling for "A white man's Government, by white men for the benefit of white men." [56]

The struggle between white and black had already begun. The whites believed that the long continued rule of ignorance and vice, which existed in their eyes and which they resented so bitterly, could have only one result—the ruin of the country and the confiscation of all property by the power of taxation.[57] The white people of the South felt that they were confronted with such a condition after seven years of Negro rule. It was a time of deep emotion and intense feeling all over the South.[58] Each white man swore a solemn oath before high Heaven that he would free himself and his posterity from the disgrace of Negro rule or die in the attempt.[59] That idea was the battle cry. The people felt that they were struggling against infamy and dishonor.[60]

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[55] Wharton, *op. cit.*, p. 184. Quoting the Yazoo City *Banner* from the *Mississippi Weekly Pilot*, July 31, 1875.

[56] *Ibid.* Quoting the Handsboro *Democrat* from the *Mississippi Weekly Pilot*, April 10, 1875.

[57] Rowland, *op. cit.*, p. 7.

[58] *Ibid.*

[59] *Id.*, p. 9.

[60] *Ibid.*

The issues of the remarkable campaign against the Negro vote were clear and well defined.

> "*First*: The negro has proven himself unworthy of suffrage, and it should be taken from him.
>
> *Second*: Negro rule is ruinous to a State.
>
> *Third*: The honest, intelligent people of a State should control it.
>
> *Fourth*: Negro suffrage has been given a fair trial with terrible results.
>
> *Fifth*: Freedom could not in a moment transform an ignorant man into an intelligent citizen.
>
> *Sixth*: The negro was being made a tool in the hands of thieves and plunderers.
>
> *Seventh*: There was not a State under negro rule that showed even a trace of honest, intelligent, government.
>
> *Eighth*: That existing conditions must be overthrown at whatever cost." [61]

The Negroes were told plainly that they would not be allowed to vote and it would be best for them not to attempt it. Nothing was concealed. The white people of Mississippi were going to exercise even the right of revolution to free themselves. They would use force, the only means in their power to overthrow what they saw as misrule, corruption, and dishonesty.

The year 1875 was to be the year of action to regain white supremacy in Mississippi. Already there were frequent conflicts between the races, the Negroes always suffering most. The attitude that the votes of the Negroes could be secured by treating them fairly and by reasoning with them was now being scorned. The time had come when the whites

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[61] *Ibid.*

were going to be more forceful. From Colonel McCardle of the Vicksburg *Herald* came the answer.

> "The way to treat Sambo is not to argue to him or to reason with him. If you do that, it puffs his vanity and it only makes him insolent. Say to him, 'Here, we are going to *carry* this election: you may vote as you like: but we *are* going to carry it. Then we are going to look after ourselves and our friends; you can look after yourself.' And he will vote with you." [62]

As a Democratic leader declared the following year:

> ". . . (The) only issue in the election was whether the whites or the blacks would predominate; there was no other politics that I could see in it. Men that had been Republicans all their lives just laid aside Republicanism and said they had to go into the ranks then." [63]

In the words of J. S. McNeilly, describing the situation:

> "It was part of the creed of a desperate condition, one easily understood, that any white man, however, odious, was preferable. . . . to any negro however unobjectionable individually." [64]

Once the general policy had been adopted that Negro and Republican control of the state government was to be broken at any cost, a number of methods were followed for its accomplishment. One of these involved the intimidation of

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[62] Wharton, *loc. cit.*, Quoting from the Vicksburg *Herald* from the *Mississippi Weekly Pilot*, May 29, 1875.

[63] *Id.*, p. 185. Quoting the testimony of W. A. Montgomery in Senate Reports, No. 527, Forty-Ninth Congress, First Session, p. 542.

[64] Wharton, *loc. cit.*, p. 185. Quoting from J. S. McNeilly "Climax and Collapse of Reconstruction in Mississippi," in Publications of the Mississippi Historical Society, XII (1912), p. 405.

those whites who still worked with the Republican party. Against the Negroes themselves one of the most powerful forces used was economic pressure. All over the state Democratic clubs announced that no Negro who voted for a Republican could hope for any form of employment the following year.[65] Lists of Negroes who were pledged for or against the party were prepared; and arrangements were made for "checkers" to be present at the polls. After the election, the names of Negroes marked for discharge from employment were printed in the various papers, along with the names of those who deserved special consideration for having refrained from voting or for having worked with the Democrats.[65a] In some cases doctors announced that they would no longer serve Negroes who did not vote for the Democratic ticket. These were the more subtle methods of securing the election victories. By intimidation, by social and economic ostracism, by drawing the color line, by discharge from employment and forced resignations: by all of these methods the whites were going to regain complete political supremacy.

At first, the Negro was intimidated and frightened from the polls. Even more successful was the use of threats and actual violence. Urged on by newspapers and political leaders, young men all over the State formed militia companies. Democratic clubs provided themselves with the latest style of repeating rifles. With this powerful military force at its command, the "White Democracy" was ready for its campaign against a mass of Negroes who were timorous, unarmed, and largely unorganized.[66]

The Negroes fell easy prey to the white tactics of violence. Negro political leaders were warned that another speech would mean death. Negroes were prevented from

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[65] *Ibid.*

[65a] *Id.*, p. 186.

[66] Wharton, *op. cit.*, p. 188.

registering by sham battles and the firing of pistols at registration points or by armed pickets who met them on the roads. Moreover, in the political, economic, and social subjugation of the freedman, the most effective weapon ever developed was the riot.[67] The lesson learned was that the Negroes largely unarmed, economically dependent, and timid and unresourceful after generations of servitude, would offer no effective resistance to violence.[68] Throughout the period, any unpleasant incident was likely to produce a "riot". During the bad feeling of 1874 and 1875, there were a great number of unpleasant incidents. After each resulting riot, Negro resistance to white domination in the surrounding area completely collapsed.[69]

The Democrats maintained complete unity of their own forces during the campaign. In addition they had drawn many whites from the Republican party into their ranks. Meanwhile, with many of their leaders dead or in hiding, the Negroes faced the proposition of either voting with the Democrats or staying away from the polls. Many Negroes chose the latter but many whites, dreading violence themselves, also stayed away and did not vote.[70] With the aid of these methods, the Democrats came very close to sweeping the State in the elections of 1875.

In 1876, the Congress of the United States saw fit to conduct an investigation of the Mississippi election of 1875. The Senate investigating committee found that "The course of the Democrats in organizing and arming themselves to resist the Governor in his efforts to preserve the public peace was unlawful, and the proceedings should have been suppressed by the State authority if possible, and, in case

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[67] *Id.*, p. 187.

[68] *Id.*, p. 190.

[69] *Ibid.*

[70] Albert D. Kirwin, *Revolt of the Rednecks: Mississippi Politics: 1876-1925* (Lexington: University of Kentucky Press, 1951), p. 7.

of failure on their part, by the Government of the United States."[71] The Committee report showed that the Democrats murdered a number of prominent Republicans, both white and black to carry the election. The members of the Committee also discovered that for many weeks before the election, members of the Democratic military organization traversed the various counties, menacing the voters and discharging their guns by night as well as day. It was stated that on the day of the election, at several voting places armed men assembled, and that such groups controlled the elections, intimidated the Republican voters, and *in fine*, deprived them of their opportunity to vote the Republican ticket. The findings were that in several cases, where intimidation and force did not result in securing a Democratic victory, fraud was resorted to in conducting the election and in counting the votes. The Committee determined that the contemporary Legislature of Mississippi was not a legal body, and that its acts were not entitled to recognition by the political department of the Government of the United States. The report of the investigating committee to the Senate concluded by stating:

> "The evidence shows, further that the State of Mississippi is at present under the control of political organizations composed largely of armed men whose common purpose is to deprive the negroes of the free exercise of the right of suffrage and to establish and maintain the supremacy of the white-line democracy, in violation alike of the Constitution of their own State and of the Constitution of the United States.
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> "The events which the committee were called to investigate by the order of the Senate constitute one of the darkest chapters in American history . . .

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[71] *Congressional Record*, Forty-Fourth Congress. First Session. Vol. IV. July 29 to August 15, 1876, p. 5276.

"They refused to accept the negro as their political equal, and for ten years they have seized every fresh opportunity for a fresh opportunity for a fresh denial of his rights. At last they have regained supremacy in the State by acts of violence, fraud, and murder, without its honor, dignity, generosity or justice.

"By them the negro is not regarded as a citizen and whenever he finds a friend and ally in his efforts to advance himself in political knowledge or intellectual culture, that friend and ally, whether a native of the State or an immigrant from the North, is treated as a public enemy. The evil consequences of this policy touch and paralyze every branch of industry and the movements of business in every channel . . . "[72]

"They have secured power by fraud and force, and, if left to themselves, they will by fraud and force retain it. Indeed the memory of the bloody events of the campaign of 1875, with the knowledge that their opponents can command, on the instant, the presence of organized bodies of armed men at every voting-place will deter the Republican from any general effort to regain the power wrested from them. These disorders exist also in the neighboring states, and the spirit and ideas which give rise to the disorders are even more general.

"The power of the National Government will be invoked, and honor and duty will alike require its exercise. The Nation cannot witness with indifference the domination of lawlessness and anarchy in a State, with their incident evils and a knowledge of the inevitable consequences. It owes a duty to the citizens of the United States residing in Mississippi, and this duty it must perform. It has guaranteed to the State

[72] *Id.*, p. 5280.

of Mississippi a republican form of government, and this guarantee must be made good." [73]

The Committee suggested that the measures necessary and possible in such an exigency were three:

"1. Laws may be passed by Congress for the protection of rights of citizens in the respective States.

2. States in anarchy, or wherein the affairs are controlled by bodies of armed men, should be denied representation in Congress.

3. The Constitutional guarantee of a republican form of Government to every State will require the United States, if these disorders increase or even continue, and all milder measures shall prove ineffectual, to remand the State to a territorial condition, and through a system of public education and kindred means of improvement change the ideas of the inhabitants and reconstruct the government upon a republican basis." [74]

The Congress never saw fit to pass any of the measures and thereby Reconstruction came to an end in Mississippi.

The "Revolution" of 1875 placed the control of the State government in the hands of the Democrats, men sworn to preserve the principles of home rule and white supremacy.[75] Proscription of the large Negro vote was the natural result of the white victory. When the Democratic legislature met in January of 1876, it quickly completed the work by impeaching the Lieutenant-Governor, and by securing the resignations of the Governor and the Superintendant of

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[73] *Ibid.*

[74] *Id.*, p. 5281.

[75] William Alexander Mabry, "Disfranchisement of the Negro in Mississippi," *The Journal of Southern History*, IV No. 3 (August, 1938), p. 318.

Education. This ended the "Political Revolution" successfully. Essentially, it was a racial struggle.[76] Finally in preparation for the Congressional and Presidential elections of 1876, the Legislature passed a complicated election law.

Under the new system established by these election laws, registration of voters was placed in the hands of local boards appointed by the Governor, the President *pro-tem* of the Senate, and the Secretary of State. Of the prospective voters, the regulations were:

> " . . . (to) require each voter to state, under oath, in what election district of the county he resides . . . , and in what portion of said district; and if resident in any incorporated city or town, in what ward of said city or town; and his occupation, and where prosecuted, and if in the employ of any one, whom, where, and the nature of employment." [77]

A number of local boards carried the matter to the extreme of demanding that the Negroes know the section, township and range in which they lived and worked. At the first incorrect answer or confession of ignorance, the prospective registrant was ordered to "stand aside".[78]

The approach of the election of 1876 brought in many sections, a return to the methods of 1875. In general, the Democratic leaders prevented the Negroes from voting. "Never in radical times," said an observer, "was more fraud and intimidation practiced." [79] The election was a "complete farce", but even so, it was said, "Enough votes were

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[76] Wharton, *op. cit.*, p. 197.

[77] *Id.*, p. 199. Quoting the Mississippi Session Laws, 1876, pp. 66-77.

[78] Wharton, *op. cit.*, p. 200.

[79] Kirwin, *loc. cit.*, Quoting from the Jackson *Daily News*, January 1, 1877.

put in to elect the Independents but by some means were not counted." [80] Many of the registered voters dreading the violence stayed away from the polls. Senator Lamar of Mississippi sanctimoniously attributed all these election malpractices to the opposition; but other Democratic leaders admitted that they had used repression, intimidation, and other . . . illegal devices . . . to overcome the negro majority." [81] Again, the election tactics of the Democratic leaders were victorious, bringing a sweep of the State.

The men who came into power with the overthrow of the radical government in 1875-1876 are frequently referred to as "Bourbons". The Bourbons were supposed to be those who "never forgave and never forgot"; and who all agreed in their determination to "control . . . the Negro vote to insure the continuation of white supremacy." [82] During the Bourbon regime in Mississippi, the Negro took little or no part in politics. However, what Negro votes there still were, were courted by the Democratic press. The Jackson *Clarion* became an enthusiatic supporter of Negro suffrage, pointing to the increased representation in Congress and in the Electoral College which had come to the South as a result of Emancipation and enfranchisement.[83] Again, this was done only to get and to control the Negro vote. The Negro could not use his vote, but his vote could be used.

In the political machinery of the State, election officials had become only slightly less important than party officials.

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[80] *Ibid.* Quoting from the Jackson *Weekly Clarion*, November 29. 1876.

[81] Kirwin, *op. cit.*, p. 8. Quoting the Jackson *Weekly Clarion*, Nov. 22, 1880.

[82] Wilkie D. Halsell, "The Bourbon Period in Mississippi Politics, 1875-1890," *The Journal of Southern History*, XI (1945), p. 521-22.

[83] Kirwin, *op. cit.*, p. 15.

A State Board of Election Commissioners, composed of the Governor, Secretary of State, and Attorney-General, appointed county boards, consisting of "three discreet persons" not all of the same party. The state board also appointed a registrar in each county to register the names of the voters. The registrar was appointed for a four year term. County election commissioners were appointed two months before each Congressional election and held office for two years unless removed. The county election commissioners appointed three managers for each election district, not all of the same party, and had appellate jurisdiction over decisions made by the registrar. The managers were to see that the election was conducted fairly and agreeably to law, and were to be the judges of the qualifications of electors presenting themselves at the polls.[84]

The local election officials occupied positions of great power. By encouraging some to register and by discouraging others, they could influence elections. The choice of the election commissioners by State officials "made all things possible."[85] Thousands of opposition votes were thrown out on technicalities. Fraudulent returns were frequently made. If necessary, ballot boxes were stuffed. Unfairness on the part of election officials was repeatedly charged, not only by Republicans and Independents, but in the few cases where the opposition had gained control, by regular Democrats. The Secretary of the Republican State Committee on the campaign of 1876 said, "It is obvious that such arrangements are well calculated to deprive many citizens of an opportunity to register and vote."[86] The following year a prominent Democrat of Hinds County charged R. H.

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[84] *Mississippi Laws*, 1876, Chapter LXVII, Ibid. Code 1880, Chapter LVI, Code 1880, Secs. 121, 124, 128, 133, 138-140.

[85] Kirwin, *op. cit.*, p. 36.

[86] Lake to Stone et al., Aug. 7, 1876; W. A. Percy to St. Board of Registrars, August 14, 1876, Letters of Governors, Series E, 128a.

Reeves, the Hinds registrar, with "fraudulent action" in registering unqualified voters and in refusing to register some who were qualified.[87] Mississippi politics and its corruption continued in this vein until 1890. The continuous succession of Democratic victories in state elections is ample proof of the effectiveness of the Democratic tactics. For fifteen years, it seemed more expedient to control and suppress the Negro vote than to try to reduce it legally.[88] Comparatively few Negroes were voting. In fact, fewer and fewer voted each year. Those Negroes who did vote, by and large voted Republican; or if they did vote Democratic, their votes were controlled by the few white men in the district. By 1881 when Senator Lamar concluded that the blacks were more estranged from the whites than ever and that they were not able to "assimilate with our political habitude and methods," the end of an era, and of a "Revolution", was dawning.[89]

The late 1800s brought with them the call for a Constitutional Convention. This call marked the end of the successful revolution against the Negro and Reconstruction which had begun in 1875. The "Revolution" had accomplished its purpose, complete white supremacy had been returned to Mississippi. The 1875 upheaval had been a united action by an overwhelming majority of the white people motivated by a feeling of necessity. The Negroes' rights were taken away "not because they were radicals", but because a class of men, whose leaders were themselves radicals when it paid to be, undertook to supersede the administration of law "so far as it applied to the colored popu-

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[87] Lawry to Faulconer, November 3, 1877, Letters of Governors, Series E, 135a.

[88] Mabry, *op. cit.*, p. 318.

[89] J. T. Wallace, *A History of the Negroes in Mississippi from 1865 to 1890* (Clinton, Miss. 1927), p. 148.

lation."[90] The rebellion of 1875, virtually trampled the State government under foot by armed resistance and murder. This was immediately followed by open defiance of the Constitutional Amendments; by the wholesale disfranchisement of the colored man;[91] by almost all of his civil rights being effectively denied. Such was admitted by Governor Ames, years later, when he said, ". . . As my puny efforts were failures, so have become the Reconstruction Acts of Congress; and in making free and equal citizens, Lincoln's Proclamation Emancipating the slave."[92]

III.

In the decade of 1880 to 1890 it became apparent that the "Mississippi Plan" of dealing with the black majorities would, unless checked, pollute the very sources of Republican Government.[93] Symptoms of the diseased political condition grew so acute that the demand for suffrage restriction to effect an electorate under which there could be white supremacy through honest elections became quite imperative.[94] On the part of many whites there was a desire to be free from the necessity of fraud and intimidation theretofore found necessary at the ballot box.[95] A Constitutional Convention if called, could write a new Constitution for the State. This document could effectively solve the problem of disfranchising the Negro without on its face violating

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[90] Kirwin, *op. cit.*, p. 23.

[91] Fisher, *loc. cit.*

[92] Ames, *loc. cit.*

[93] J. S. McNeilly, "History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Elections in the Constitutional Convention of 1890," *Publications of the Mississippi Historical Society*, VI, (1902), p. 130.

[94] *Ibid.*

[95] J. P. Coleman, *The Origin of the Constitution of 1890*, Reprinted from The Journal of Mississippi History, April 1957, p. 81.

the prohibitions of the Fourteenth and Fifteenth Amendments. This was to be the plan of action. However, the efforts to get a Constitutional Convention between 1876 and 1890 failed because a majority of the white people seemed firmly convinced that a Convention would be unable to work out a plan to disfranchise the Negroes so completely as to give the whites a majority of the electors of the State. Many of the most thoughtful men, not being able to foresee what a Constitutional Convention might achieve, feared that an effort to limit Negro suffrage would bring evils upon the State in the way of adverse Congressional legislation and federal administrative proceedings.[96]

During this period there was growing resentment against the low ebb of political morality in the State which was closely related to the illegal suppression of a large percentage of the black vote. The white election officials, who were accustomer to cheating Negroes at the polls, were not above cheating whites as well. In 1886, this resentment caused sentiment in favor of a Constitutional Convention to be sufficiently strong to induce the Legislature to pass a resolution calling for a Convention. Governor Robert Lowry vetoed the measure on the grounds that it was inexpedient to take such a step. Furthermore, the Governor expressed the opinion that the proposed Convention was fraught with evil, and if carried out according to the terms of the Act, would prove disastrous to the people of the State.[97] He said that the time and circumstances for dealing with the fundamental law were inopportune, and that when the question of qualifying suffrage was touched, that of labor became involved. This he felt, would produce a storm of excitement that had not been witnessed in Missis-

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[96] Coleman, *op. cit.*, p. 72-73. Quoting Judge Robert H. Thompson from a speech made May 2-3, 1923 to the Mississippi Bar Association in Biloxi, Miss.

[97] Coleman, *op. cit.*, p. 74.

sippi politics before.[98] In other words, a Constitutional Convention would simply cause too much political strife in the State.

In 1888, the agitation for a Convention was revived. That year brought the overthrow of the Republican control of the muncipal government of Jackson. In January of 1888 that overthrow involved a revival of all the tactics of intimidation which had been in use in 1875.[99] So successful were these methods that only one Negro in the entire city even attempted to vote. The events of this election further stimulated the movement which was going on throughout the State for the complete elimination of the Negro voter. The attitude of the white Mississippian of the period can easily be seen in the speech of that State's Senator on August 27, 1888. He spoke of the Jackson election:

> "And, sir, even if the proof had shown that the effect of the action of a few young men, under circumstances of great aggravation and intense excitement, was practically to disfranchise the negro voters of the city, at that single election, their treatment of those voters without law was no harsher than other negro voters had received in this very city through the forms of law, without the same provocation or extenuation . . .
>
> "I do not believe there is a Senator here who would not, if he lived in that State, put forth all his powers to avert the horrors of black supremacy, and save his own people if he could from the calamities of such a curse. And I do not believe there is a white community in any Northern State, which if in our condition, would tamely and meekly submit to a reign of ignorance and

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[98] *Id.*, p. 75.

[99] Wharton, *op. cit.*, p. 202.

venality under which honorable white men of intellect and substance would be excluded from all the high places of official trust in the State, and all the possessions and most sacred interests of their race brought under the rule uneducated, undisciplined, and irresponsible negroes." [100]

In the demand for a Constitutional Convention and the elimination of the Negro voter, the jealousy of the white counties, disgust with machine control and constant fraud, a determination to open the political field to controversial questions, the rising power of the prohibitionists, and prejudice against a "Black and Tan" constitution all played a part.[101] But there can be little doubt that the most powerful factor in the desire for a legal elimination of the Negro voter was the change that had occurred in Washington.[102] In 1889, for the first time since 1875, the Republicans gained effective control of all the departments of the national government. Alarmists did not fail to find evidence that the Republican triumph in the nation had once more aroused the Negroes in the State.[103]

The Democratic State Convention in 1889 nominated John M. Stone for Governor. He was known to favor the calling of a Constitutional Convention. The party conclave adopted the following resolution: "We recommend that the question of a convention be made an issue before the people in the coming election, so that they may be enlightened by the discussion, and that the Legislature

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[100] Edward C. Walthall, *The Race Problem in Politics*, Speech in the Senate of the United States, August 27, 1888. Printed in Washington, 1888, p. 18, p. 32.

[101] Wharton, *op. cit.*, p. 208.

[102] *Ibid.*

[103] *Ibid.*

elected govern itself accordingly." [104] Since there was great unity in the Democratic Party, and since the Democratic candidates were sure to carry the election, the action of the party convention could have only one meaning. In the words of the Memphis *Daily Avalanche* it meant that "It is certain that the State of Mississippi will call a Constitutional Convention, perhaps next Spring, the principal object of which will be to settle this matter in a practical manner. Negro suffrage in Mississippi is an encumbrance upon the State which cannot much longer be endured." [105]

At this point there arose a dispute on the issue of the Constitutional Convention and of Negro disfranchisement between the two Senators from Mississippi. Senator James Z. George enthusiatically favored the Convention and the taking of the vote from the Negro. On October 16, 1889, Senator George spoke at Greenville where he emphasized the seriousness of the suffrage problem and the necessity for the continued supremacy of the white race. He declared himself to be unequivocally in favor of a new Constitution. On October 21, 1889 Senator George addressed a gathering in the hall of the House of Representatives in the Old Capitol. He was quoted in the Jackson *Clarion-Ledger* as saying, "Our chief duty when we meet in Convention, is to devise such measures, consistent with the Constitution of the United States, as will enable us to maintain a home government, under the control of the white people of the State." [106] He further pointed out that "Mr. Jefferson thought that the people should have the privilege of remedling the Constitution once in every generation, which he estimated to be nineteen years." Finally, he added, "If the white people of Mississippi

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[104] Mabry, *op. cit.*, p. 320.

[105] Coleman, *op. cit.*, p. 82. Quoting Memphis *Daily Avalanche* of August 14, 1889 edit.

[106] *Jackson Clarion-Ledger*, October 24, 1889.

cannot be trusted to remodel a Constitution . . . we are already lost."[107] The State's other Senator, Edward C. Walthall, spoke to a group in the same hall on October 28, claiming that none could point out any remedy for the evil of Negro suffrage. He said, "While the Federal Constitution remains unchanged, white supremacy cannot be made permanent in Mississippi by any ordinance a state convention can adopt." He further argued that a campaign for delegates to the convention would renew the "largely abated" interest of negroes in political affairs.[108] These two issues, the Constitutional Convention and Negro disfranchisement, were left to the voters of the State to decide in the forthcoming election.

The outcome of the November election may be interpreted as a triumph for the advocates of suffrage reform.[109] Stone became Governor of the State, and, in February, 1890, the Legislature issued a call for a Constitutional Convention to be assembled in Jackson on August 12 of that year. The stage was now set; only the issues awaited clarification.

Before the Convention was called, there had been opposition in the newspapers to the plans of the Democratic leaders to take the vote from the Negro. The Natchez *Democrat* had condemned the various plans for disfranchising the Negro as proposals "To remove the temptation by legalizing the fraud."[110] The *Clarion-Ledger* had denied that an additional guarantee of white supremacy was needed by the state or could be provided by the convention.[111] But now, after the call, again and again, Democratic leaders and Democratic editors declared that white sovereignty was the only point at issue and that all others must be suppressed as dangerous to the dominant race. Somehow, the

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[107] *Ibid.*

[108] Coleman, *op. cit.*, p. 86.

[109] Mabry, *op. cit.*, p. 321.

[110] Kirwin, *op. cit.*, p. 50. Oct. 1889, Jan. 1890.

[111] *Id.* Jan. 26, 1888, Oct. 31, 1889.

Negro must be eliminated as a political factor in Mississippi.

There was also much concern with regard to both the methods which had been used to secure election victories and the after-effects of such techniques. These practices were putting "Too great a strain on the public conscience."[112] There was concern as to the effects which these methods were having on the new generation of young men who were beginning to take a leading part in the politics of the State. The general belief was that this new generation, not understanding the terrible necessity which caused the introduction of such methods, would consider them a normal form of political action.[113] Colonel B. F. Jones wrote to the *Clarion-Ledger*, "The old men of the present generation can't afford to die and leave their children with shot guns in their hands, a lie in their mouths and perjury on their souls in order to defeat the negroes. The Constitution can be made so this will not be necessary."[114] This feeling can best be summarized in the words of Judge R. H. Thompson:

> "The controlling factor in increasing the desire for a new Constitution was one creditable to the citizenship of the State: it was this: Thoughtful men saw quite distinctly that the way elections were being carried corrupted the morals of the people, especially the young men, and brought into disrepute the purity of the ballot box, the fundamental basis of American conceptions in government. Bad as the domination of a negro majority of voters had proved itself to be, the then prevalent way of preventing it led to serious evils and rendered efforts to escape the consequences of both

[112] Kirwin, *op. cit.*, p. 59.

[113] Wharton, *op. cit.*, p. 207.

[114] *Ibid.* Quoting the Port Gibson *Reveille*, May 23, 1890.

> imperative. Something had to be done and many men who had previously opposed a Constitutional Convention by 1890 became the advocates of a convention, trusting that by God's aid the State might be relieved from its deplorable situation." [115]

The only solution was the elimination of the necessity of fraud of "ring-control" in the black counties, and the reduction of the strength of those counties in the government of the State.[116]

It has been authoritatively stated that by 1890, Mississippi's Democratic Congressmen were "ready to give enthusiastic support to any scheme that would put a legal face on the elimination of the negro vote." [117] The threat of Federal intervention in elections presented by Republican control in Washington seemed to many to be the strongest sort of argument for putting a stop to the illegal tactics used to disfranchise the Negroes. It virtually necessitated the substitution of constitutional or statutory provisions to accomplish the same end.[118] The Southern Congressmen protested vigorously against this new threat to home rule, but could scarcely deny the charge hurled by their Republican opponents: that great numbers of Negroes were being illegally deprived of the right to vote.[119] The Lodge (Force) Bill in Congress which would permit some federal control in states where voting rights were being denied met strong Southern oppositon. But Senator Lodge said in his own defense, and it could not be denied by the Southern opposition, that "The negro is not thrust from his rights merely

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[115] Coleman, *op. cit.*, p. 81. Quoting Thompson, Mississippi Constitution of 1890, p. 9.

[116] Wharton, *loc. cit.*

[117] *Jackson Clarion-Ledger*, March 13, 1890.

[118] Mabry, *op. cit.*, p. 322.

[119] *Id.*, p. 321.

because he is ignorant and unfit to use them, as is certainly charged, but because his skin is black . . . "[120] In Mississippi at the time, it was urged as a part of wisdom to imbed the restrictions on Negro voting in her organic law before the passage of a "Force Bill" could be effected. Such action would prevent the State political power from again being subverted by an Act of Congress and military despotism.[121] Admittedly the primary purpose of the Convention would be to devise a legal method for safeguarding the political supremacy of the white race in State and local politics.

The Negroes in Mississippi were by no means oblivious to the major purpose for which the Convention was called. About the middle of June, Negro Republican Delegates from forty counties held a meeting in Jackson, and a committee prepared an address to President Harrison protesting against the suppression of the colored vote. A bold indictment of the whites of the State was made: ". . . it is not due to an apprehension that the blacks would dominate the whites that fraud and violence are resorted to in popular elections in this State. It is due, however, to a well-formed apprehension, that but for the inauguration and enforcement of such methods, the Democratic Party would be defeated."[122] The Democrats did not remain silent. To the Negroes of the State was issued a warning that the Democrats were preparing through means of the Convention, to shape the election law to their needs; and then "the policy of crushing out the manhood of the negro citizens is to be carried on to success."[123] The editor of the *Clarion-Ledger*

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[120] *Congressional Record*, Fifty-First Congress, First Session, p. 6544. June 26, 1890.

[121] McNeilly, *op. cit.*, p. 131.

[122] Mabry, *op. cit.*, p. 323. Quoting the *Jackson Clarion-Ledger* of July 4, 1890.

[123] *Ibid.*

commented on the assembly of the Negroes saying, "It will do no harm . . . , because the negroes cannot be persuaded to 'fight a cyclone.' It is well understood that the Convention will be composed exclusively of whites."[124] This, however, was not the understanding of the Negroes. In a few counties they did go through the formalities of selecting candidates for the Convention. After a few days of active campaigning by one of those selected by the Negroes, F. M. B. Cook, his body was found, riddled with bullets. The death of Cook offered convincing evidence that the Democrats did not intend their warnings to be ignored. The few efforts at organized opposition vanished, and the rest of the campaign was uneventful.[125] In August, the Delegates were chosen in an election that drew fewer votes than any since the War. The total vote cast for the Delegates from the State at large was about 39,000.[126]

As the time for the Constitutional Convention came near, abstract discussion of the evils of Negro suffrage and the dangers inherent in the "Force Bill" gave way to concrete proposals for restricting the suffrage in the interest of the white race. The principal ones were these: the Australian ballot system; an educational prerequisite for voting; and increased poll tax to be paid before registration; a change in the basis of representation in the white counties; a property qualification for voting; plural voting by property holders; woman suffrage; longer residence requirements for voting; and examination and certification of fitness for voting by a Commissioner. A prominent national magazine, *The Nation* said, with reference to the suffrage and the Constitutional Convention: "What is desired is one which will cut off most of the negroes from the suffrage, and at

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[124] *Jackson Clarion-Ledger*, June 26, 1890.

[125] Wharton, *op. cit.*, p. 211.

[126] *Jackson Clarion-Ledger*, August 14, 1890.

the same time will not disfranchise any considerable number of whites—and this is a difficult result to secure." [127] This is the change in suffrage that the Mississippi whites and their leaders wanted from a Constitutional Convention, and it is with this goal in mind that they met to secure their purpose.

There were 1,289,600 persons in Mississippi in 1890, of whom 742,559 were Negroes and 544,851 were white.[127a] Of the total numbers of whites and Negroes, there were 189,884 registered Negro voters and 118,890 registered whites.[128] When the Constitutional Convention met with its one hundred and fifteen members, on August 12, uppermost in the minds of the revisers was the desire to eliminate, or at least, curtail, voting by the Negroes. Only four of the representatives were not Democrats, and only one of them was a Negro.

Judge S. S. Calhoon, who on August 12, was elected President of the Convention, had spoken at length on both of these issues earlier in 1890.

> "This civilization, let it not be forgotten, is a White Civilization. Otherwise they must destroy, or govern the whites because in association, one race or the other must and will rule as a race. With the solitary exception of the Moors, who governed Spain for about eight centuries the other races have been ruled by the whites, whenever political contact has occurred, and, by an inescapable natural law, they must continue to be so ruled, in political association, by the only race which has manifest a spirit of Progress . . .

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[127] Coleman, *op. cit.*, p. 71.

[127a] *Ibid.*.

[128] *Jackson Clarion-Ledger*, September 16, 1890, p. 1 Col. 4 Speech of Isiah Montgomery.

"The other races here should have and be secured in every possible right under the laws which the whites enjoy, but to share in the great and delicate power of government, no . . .

"We are liberal, and properly so, but it seems a serious blunder to share the governing power with Indians, Malays, Mongols, or negroes . . .

"The right to the ballot and the principle of no taxation without representation had, originally, reference only to the race which organized, and was responsible for the nature and enlightenment of its own government . . ."

"The Black Race. Is it safe, or wise, for this race to exercise the right of suffrage here, that its members should have the power to nullify an equal number of white votes, debauch our civilization and nullify our grand achievements? . . .

"The point now is whether it is safe or not, and for the real good of either race, that any of the other four distinct types of manhood should share in governmental control with the Caucasian . . .

"The lives, property, labor and liberty of the blacks should be fully protected, as they will be, but it should not be required that the South should be governed by another race . . .

"Joint government by distinct races means the exclusion of the minority race . . . Each, by a law of nature fixed and unmovable will vote to exclude the other . . .

"Negro suffrage is an Evil, and an evil to both races. Its necessary outcome is that conflicting aspirations and apprehensions must produce continual jars and frequent hostile collisions, which do not occur with homo-

geneous races. It has been tried for over twenty years and only heart-burnings and violence are said to have resulted . . .

"It will not do to familiarize the Federal power with supervision of the ballot in the States. Better to disfranchise one or the other of the races in the South at once; yes, better to disfranchise the whites there, and expatriate them, than to familiarize the central government with interference in the States. It is to be determined whether or not there shall be a continual festering sore on the body politic, continual bickering animosities and strife . . .

"Shall the ballot remain as now adjusted, the whole country, in the meantime, taking the chances of the rapid increase of the blacks, and leaving, in the meantime, the whites as they are now, in those localities where they are outnumbered? . . ."

"The difficulty lies not in the ignorance of the negroes for a large part of the whites are ignorant of government affairs, which they will not take the trouble to comprehend. It lies in the principle of human nature before referred to, and the want of homogeneity in the races, and this nothing can so far overcome or modify as to make safe, political affiliation . . .

"Repeal of the constitutional clause conferring the ballot is of course the only sweeping and certain remedy. Of course I do not suppose this will soon be adopted and I hope the course of the black race may be that it will never be absolutely necessary but if they continue to put everything on a race issue, the time will come when the white race of all sections will yield to necessity and have repeal . . .

"There is no politics in the South now, save the race question. Her people naturally adhere to any National party which is the least threatening in the encouragement of black domination. Why should the negro have this dangerous power of suffrage? He had freedom suddenly thrust on him . . .

"The President well called attention, in his inaugural address to the danger of suffrage bestowed freely on immigrants, even of our race, from foreign countries. He is right in this caution and the danger is greater in bestowing it on another race which can never amalgamate or be homogeneous with the Caucasian . . . There was no warrant for his expecting to share in the governing power, nor was there any promise or previous design. To so share will jeopardize his own future and that of the whites. If he brings his own reason to bear on his condition he must see that his future is better assured without the ballot . . .

"It is for him to say whether this is preferable to unending troubles from a desire to interfere with a white-man's government, and to impress his opinions on a white civilization . . .

"But in politics the two races are as wide apart as the poles, and they will always remain so, solidly, race opposed to race." [129]

Both the desire and the rationale for disfranchising the Negro existed. Now Calhoon and the other members of the Convention had to develop the methods and plans for achieving that end. One of the earlier pre-convention proposals was the possible use of the Australian ballot system for elections. The *Clarion-Ledger* said of that proposal:

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[129] S. S. Calhoon, *Negro Suffrage* (Jackson: Commonwealth Steam Press, 1890), printing of a speech made in Jackson, Mississippi, February 22, 1890.

> "The Australian ballot system is excellent, and after careful inquiry of persons, who know how it works in other States, we urge our Convention to adopt it . . . The ignorant and prejudiced vote is shut out, and there is no longer the slightest dread of the negro vote. On the contrary, the negro realizes that he is no longer an important factor in politics and is growing more and more indifferent." [130]

What was necessary and what was desired were plans like these which would accomplish the goal without violating the United States Constitution.

The Constitutional Convention of 1890 commenced on August 12 with the following prayer:

> "May this organic law here carefuly and prayerfully framed stand the test of the years with no more moral taint upon any of its provisions, affording the amplest protection to the humble citizen, preserving the integrity of our traditional liberties and be a bond of union and interest to a peaceful, prosperous and happy people. To this end we pray that the Convention may be delivered from pride of personal opinion and prejudices; and may it be inspired by a supreme—a divine desire—to benefit the entire people of this commonwealth." [131]

This was to be the spirit which was to guide the Convention. However, the divine deliverance from pride of personal opinion and prejudices lasted not even through the first day of meetings. Prejudice and pride of personal opinions were to be the guiding lights of the Convention members from that day and for the duration.

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[130] *Jackson Clarion-Ledger*, July 31, 1890, p. 1.

[131] *Journal of the Proceedings in the Constitutional Convention of the State of Mississippi*, of 1890 (Jackson, 1891).

Judge S. S. Calhoon was chosen President of the Convention on August 12. He then proceeded to give the following address.

> "There is no man who hears me who does not understand that the individuals of the opposite race are his friends in all the various transactions of life. There is no black man or colored man in the State of Mississippi who does not feel that in all the business of life the whites are his friends. That is one statement that is true; how is it then gentlemen that we cannot have political homogenity?
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> "It arises gentlemen, . . . , in that principle of human nature that any of the five distinct races encounter each other in the matter of government, that from the instinct implanted in its nature, it desires to be in the ascendency . . .
>
> "This ballot system must be so arranged as to effect one object, permit me to say for we find the two races now together, the rule of one which has always meant economic and moral ruin: we find another race whose rule has always meant prosperity and happiness to all races. . . .
>
> "We must never pass any ordinance of course that will work any injustice or oppression, but be full of benefit to all the citizens of this State and those who are to come. The policy must be so just and necessary that ruin shall not result but we shall have prosperity for all if possible. . . . That is the great problem for which we are called together . . . "[132]

This speech was to set the tone for the rest of the Convention. The speaker did not say plainly, that the task was

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[132] Journal, *op. cit.*, p. 326.

to find a way of bestowing political authority permanently upon a minority of the people, but there is no other fair intrepretation of his words.

Two other important persons must be mentioned before examining the work of the Convention itself. The less important of the two was Robert C. Patty of Noxubee County. Patty was made Chairman of the Committee on Elective Franchise, Apportionment, and Elections. The aspirations of Patty of Noxubee County, only one among many white counties and generally representing the views of those counties fitted in nicely with the plan of Senator George to assure a continuance of white supremacy in the state by giving the predominance in the legislature to the white counties.[133]

The other important person who must be considered is Senator J. Z. George. He had yielded to the general demand throughout the State that he accept a seat in the Convention. He was urged to give his State the benefit of his wide familiarity with State Constitutions as well as advice on the delicate questions of constitutional law involved in the exclusion of the Negro from the suffrage.[134] He declared as his unalterable conviction that any white man similarly situated would entertain and make the basis of his action the assumption that good government, peace, law and order, and the civilization of the Southern States required and demanded that the virtue and intelligence of the superior race should rule. The only safety for their civilization lay in protecting the State from universal negro suffrage.[135] Senator George was to lead the faction at the

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[133] Mabry, *op. cit.*, p. 326.

[134] James W. Garner, "The Senatorial Career of J. Z. George," *The Publication of the Mississippi Historical Society*, VII (1903), p. 255.

[135] Johnston, *op. cit.*, p. 238.

Convention which was determined to eliminate the Negro voters without barring the illiterate whites, to reject all property qualifications, and to reduce the representation of the black counties.

Early in the Convention the issue of which methods would be used to disfranchise the Negro were debated. Before any specific limitations on the right of suffrage could be passed, the questions of whether the State and the Convention had the legal right to establish such restrictions had to be answered. The Judiciary Committee had been given the following mandate:

> "Resolved: That the Judiciary Committee be requested to make a special report at as early a day as possible upon the effect of the Act of Congress re-admitting Mississippi into the Union, limiting the right of franchise and otherwise prohibiting the State from changing the Constitution of the State of Mississippi, adopted in 1869, so far as the said act shall affect the work of this Convention." [136]

The Committee made its report on August 22. The first thing it had to consider was Article I, Section 2, Clause 1 of the United States Constitution, which states:

> "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature." [137]

The Judiciary Committee determined the meaning of this Section to be:

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[136] Journal of the Constitutional Convention, *op. cit.*, p. 83.

[137] Article I. Section 2. Clause 1. United States Constitution.

"The entire subject of the franchise as to who shall have it, and the qualifications of the elector are left to the absolute and unrestricted discretion of the State. There was not uniformity then, there was not in 1870 the date of the re-admission Act, nor does it exist now.

"But who shall vote at the Congressional election—whether both sexes or one, and at what age, whether the electors shall own property, whether educated or not; is left precisely where it was placed by the second section of the same article (1)." [138]

Next, a consideration of the Fourteenth Amendment was made. The following conclusions resulted:

"The Fourteenth Amendment in terms recognizes the right of the States to determine who shall vote—by those clauses which reduce the representation, if any male citizens of the United States and of the State, are exclused from franchise as a class . . .

Contemporary history shows that the clauses of this Amendment which relate to the franchise were inserted to give the State the choice of retaining the colored race, as part of the electoral body with full representation or its exclusion with diminished representation.

It is plain in the opinion of the Committee, from this section of the Constitution, that Congress cannot confer suffrage, cannot make a voter, and that we must look to the several States, and their laws and Constitutions to ascertain who are legally competent to vote for Federal elective officers, as those of the State." [139]

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[138] Journal of the Constitutional Convention, *op. cit.*, p. 84.

[139] *Id.*, pp. 84-85.

The Committee then dealt with the Fifteenth Amendment, saying:

> "The Fifteenth Amendment has but one operation, and was engrafted in the Constitution for the single purpose of laying an inhibition on the State, of discrimination against the colored man, because of race or previous condition of servitude.
>
> The State has just as large discretion in regulating the franchise as it had before its adoption, with the single limitation, that the regulations which it prescribes shall apply to both races." [140]

Several Supreme Court interpretations of these two Amendments were considered by the Judiciary Committee.

> "*United States* v. *Reese,* 92 U. S. 215, involved the interpretation of these Amendments, as they affected the franchise. Court language was "The Amendments do not confer the right to vote on any one. They only give the right to be exempted from discrimination on account of race, color, or previous condition." (1875)[141]
>
> In *Cruikshank* (1875), "The right to vote comes from the State, but the right of exemption from the prohibited discrimination comes from the United States." [142]

Lastly, the Judiciary Committee reported its legal interpretation of the validity of the restrictions placed upon the right of Mississippi to change the suffrage provisions of its Constitution by the Act of Congress of February 23, 1870, re-admitting the State to the Union. These provisions were interpreted by the committee to be unconstitutional.

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[140] *Id.*, p. 85.

[141] *Ibid.*

[142] *Ibid.*

> "There can hardly be a conception of unequal states in the Union. Unequal in the scope of their law-making, executive and judicial powers. It would not be contended that the Federal Government could impose limitations on the political sovereignty of one State, which was not common to all, or that it could alter or change a clause or section in a Constitution presented by a State claiming admission or restoration to the Union." [143]

Of course, the Judiciary Committee did not consider another possible interpretation, *viz.;*

> "There seems no good reason to doubt that Congress had the power to demand any condition precedent to the recognition that a Southern State was at peace with a legitimate Government. To deny this is simply to deny that Congress had the authority to carry on the war." [144]

By this report, the legal question on the State's rights to alter the suffrage provisions was resolved. It was decided that the Convention could alter the Article of Franchise of the Constitution of 1869 without violating the Constitution of the United States or constitutional acts passed subsequent to it by the Congress. However, the Convention did have absolute restrictions placed on it by the Fifteenth Amendment which prevented disfranchisement of the colored man as a class. This prohibition was to be dealt with by a resolution offered by Mr. Dabney which had a preamble providing for a request to Congress to submit to the several States a proposition to repeal the Fifteenth

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[143] *Id.*, p. 86.

[144] A. C. McLaughlin, "Mississippi and the Negro Question," *Atlantic Monthly*, Dec. 1892, p. 830.

Amendment. A committee was appointed for the purpose of studying the feasibility of such an action.

> "Sir, it is no secret that there has not been a full vote and a fair count in Mississippi since 1875, that we have been preserving the ascendancy of the white people by revolutionary methods. In other words, we have been stuffing ballot boxes, committing perjury, here and there in the State carrying the elections by fraud and violence. The public conscience revolted, thoughtful men everywhere foresaw that there was a disaster somewhere along the line of such a policy as certainly as there is a righteous judgment for nations as well as men. No man can be in favor of perpetuating the election methods which have prevailed in Mississippi since 1875 who is not a moral idiot."[145]

Those are the words of Judge J. B. Chrisman, expressing the conditions which had to be ended by the Constitutional Convention of 1890. But the dilemma that the Convention had to solve was that of choosing the best method to accomplish this end. Throughout the Convention there was a bitter struggle between black and white counties. The former wanted educational and property qualifications with which to limit suffrage, whereas the latter opposed such restrictions. The white county faction under Senator George, was determined to eliminate the Negro voters without barring the illiterate whites, to reject all property qualifications, and to reduce the representation of the black counties. Their opponents under Judge Chrisman, supported the general idea of property and educational qualifications applied honestly to black and white alike. Judge Chrisman sarcastically expressed the white county view of

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[145] Coleman, *op. cit.*, p. 82 (Quoting Judge J. B. Chrisman in the convention as reported in the *Jackson Clarion-Ledger*, Sept. 11, 1890.

the problem when he said, "To avoid the disfranchisement of a lot of white ignoramuses we can't have an educational qualification, and to pander to the prejudices of those who have no property, we cannot have a property qualification." [146]

During the struggle between the factions of the black and white counties, many different plans were presented and proposed for limiting Negro voting. Among these were suggestions for the adoption of a system which would include the Australian ballot, the poll tax, and registration. The Memphis *Appeal* commented favorably on such a system, recommending it to the people of Mississippi.

> "Greater than all else, the system has given a practical, Constitutional, happy solution of the race problem, and for this reason the *Appeal* would earnestly recommend it to the careful consideration of the good people of Mississippi, who are about to meet in Jackson for the purpose of making a new Constitution for their State. It has demonstrated beyond all peradventure that the ignorant negro, he who is the trusted camp-follower of the Republicans cannot be induced to vote. In the first place only a few register, and of these, only a few are energetic enough to pay their poll tax. If the preliminaries are attended to, only the intelligent among them can vote." [147]

A proposal was made to give property owners of land of a certain value multiple votes. It was said that this would give the whites the balance of power in the State. There was some agitation for a resolution such as the following to give the ballot to certain classes of women:

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[146] Kirwin, *op. cit.*, p. 66.

[147] *Daily Clarion-Ledger*, August 11, 1890, column 4, page 1.

"The Legislature of this State shall have power to confer the elective franchise on all women who are citizens of the State and of the United States, twenty-one years of age and upwards, who own in their right, over and above all incumbrances, property listed for taxation of the value of $500 or upwards or who being widows, own jointly with their own or their husband's children, property of said value listed for taxation; or who are capable of teaching first grade public school in this State, as now prescribed by law, and who have never been convicted, and shall not be thereafter convicted of any crime or misdemeanor, and not pardoned therefor, to such extent, and under such restrictions and limitations as it may deem proper to describe." [148].

The *Clarion-Ledger* favored such a plan when it said:

"Other considerations aside, does it seem just that the intelligent, refined women of Mississippi, who hold property and pay taxes upon the same, should be denied the right to say what sort of officers we shall have, when the right of suffrage is exercised by thousands of thick-lipped sons of Ham who can neither read nor write and who own not a dollar's worth of property? Is it right that intelligence and purity should be denied a voice in the government simply because of a difference in sex?

"A female provision would increase the white Democratic vote by about 30,000 and would undoubtedly give us the balance of power. The time has come for prejudice to give place to reason." [150]

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[148] Journal of the Constitutional Convention, *op. cit.*, pp. 202-203.

[150] *Daily Clarion-Ledger*, August 25, 1890, p. 1, column 4.

Suggestions were made with regard to property, education, residence and registration as ways to eliminate the Negro voter. The best and final methods for taking the franchise from the Negro had not yet been found. There were still many questions and many different plans. The struggle was continuing, the problem had not been solved, but there was no more intellectual fodder with which to work. The goal was the same; the answer would be found; it must be. But the freedom and liberty must remain, for as was said by the Memphis *Appeal*:

> "(I)t is well the largest liberty should be allowed the members of the Constitutional Convention now in session at Jackson, Mississippi: to present their resolutions suggesting sections of the proposed Constitution, . . . The problem before the Jackson Convention is most complex, but upon its solution the happiness of Mississippi depends. Is it right and necessary that the affairs of the State should be directed and controlled by intelligent suffrage? There can be only one answer to the question. History teaches that if the Government should be intrusted to the blacks, bankruptcy will be inevitable. That is absolute truth. Therefore the mission of these Delegates at Jackson has its reason in the necessity of protecting the State from black domination, which means the domination of ignorance. No proposition submitted to the Convention thus far seeks to make any discrimination among citizens because of "race, color, or previous condition of servitude." The only desire is to keep forever the Government under the control of those competent to govern, to the end that the State may proceed tranquilly along the road to high prosperity upon which she has started so confidently and so auspiciously." [151]

[151] *Daily Clarion-Ledger*, August 23, 1890, p. 1, col. 4.

An additional legal question had to be answered by the Judiciary Committee before the Convention could go ahead with its plan to eliminate the Negro vote. That question was whether or not the work of the Convention in revising or framing a Constitution required for its validity, ratification by a vote of the people. Certainly the Negroes, who would be disfranchised, and the discontented whites would vote against the new Constitution. These two groups had enough voting power to defeat such a Constitution and to prevent major changes from being made in the franchise provisions. On September 4, the committee made its report to the Convention in which it concluded:

> "The proposition that the work of a Constitutional Convention in revising or framing a Constitution requires for its validity, a ratification by a vote of the people, has no support in any principle of Constitutional law, and is merely a political theory or doctrine which has in some of the States acquired authority from usage. The doctrine has never prevailed in this State, and has here, no sanction from usage . . . and with the exception of the single instance of the Constitution, the fruit of the reconstruction legislation of Congress, no Constitutional Convention has ever referred the question of adoption or rejection of its action to the people.
>
> "The view repeatedly acted on by the people of this State is, that a Constitutional Convention, called by a recognized authority, has the inherent power to give to the Constitution it may adopt complete obligatory effect without submitting it for ratification to the people, and the opposing view has not found acceptance in Mississippi, and cannot be said to have place in her Constitutional system . . .

"That Legislature, however, after defining the functions of the Convention to be "to revise and amend the present State Constitution, or enact a New Constitution"—language which imports final action, declined on a direct vote, to insert in the Convention Act a provision requiring the enacted Constitution to be submitted to the people for ratification or rejection. This action evinces an intention to leave the Convention free to exercise its recognized discretion over the subject of submission.

The Committee therefore expresses the opinion with confidence that the Convention may Constitutionally make the Constitution or Amendments which it shall adopt absolute and final without submitting the question of ratification or rejection to the qualified voters of the State." [152]

The State could disfranchise the majority of its voters without ever permitting them to express an opinion on the issue. Judge Ethridge of the Mississippi Supreme Court, later commented on this policy:

"It is certainly a dangerous and unwise practice to frame a new Constitution for the people without submitting it to the people for approval.

"Much mischief can be done by a Constitutional Convention having the power to ordain without submission and it is a risky proposition to ever submit to the rule that a body of men may without the vote of the people, overturn another fundamental law of the State." [152a]

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[152] Journal of the Constitutional Convention, *op. cit.*, pp. 148-49.

[152a] G. H. Ethridge, *Mississippi Constitution*, Jackson, Miss., Tucker Printing House, 1928, p. 421.

The situation was especially dangerous considering the intentions of the members of the Convention. It is interesting to note that since the beginning of the Nineteenth century almost the only Constitutions which have not been submitted to the people are those of the Southern States before or after the rebellion. No Northern State has established or altered a Constitution without popular ratification since 1818.[153]

One must consider the "Bill of Rights" of the Constitution before examining its additional provisions. It is the "Bill of Rights" which is supposed to establish the principles of and the basis for other parts of the Constitution. On September 5, the Convention adopted certain principles which must be considered as the basis of later provisions. These were:

"Section 1: That all political power is vested in, and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

"Section 2: That the people of this State have the inherent sole, and exclusive right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness; provided such a change be not repugnant to the Constitution of the United States.

"Section 4: That all persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi.

"Section 11: That no person shall be deprived of life, liberty, or property except by due process of law." [154]

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[153] McLaughlin, *op. cit.*, p. 837.

[154] Journal of the Constitutional Convention, *op. cit.*, p. 163.

These were to be the inviolate principles of the Constitution. If one compares these principles to the goals of the members of the Convention, knowing that the members full-well intended to take the vote away from the Negro, it is most difficult to conceive that the Negroes were considered citizens, part of the whole, or even as people.

> "Within the field of permissible action under the limitations imposed by the Federal Constitution, the Convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race. By reason of its previous condition of servitude and dependence, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character which clearly distinguished it as a race from that of the whites—a patient docile people,—but careless, landless, and migratory within narrow limits, without forethought, and its criminal members given rather to furtive offenses than to the robust crimes of the whites. Restrained by the Federal Constitution from discriminating against the negro race, the Convention discriminated against its characteristics and the offenses to which its weaker members were prone." [155]

Those are the words of the Supreme Court of Mississippi, spoken in 1896. The first major method of limiting Negro voting debated by the Convention was the adoption of the poll tax requirement. On September 2, the Convention considered the following resolution:

> "Section 4: A uniform poll tax of $2 is hereby imposed on every male inhabitant of the State between the ages of twenty-one and sixty years . . . to be used in aid of

[155] *Ratliff* v. *Beale*, 74 Miss. 297, 20 So. 865 (1896).

the common schools and for no other purposes; said tax to be a lien upon taxable property; the payment of the whole poll tax imposed is declared to be a qualification to vote; provided further, that no criminal proceedings shall be allowed to enforce the collection of the poll tax." [156]

Another condition was attached to make the requirement even more demanding.

"And who has paid the poll tax on or before the first day of February of the year in which he shall offer to vote, and for that next preceding, and who shall produce to the officers holding the election satisfactory evidence that he has paid said poll tax, is declared to be a qualified elector." [157]

The poll tax that would be established was therefore not a revenue measure but a measure to restrict the franchise. The Mississippi Supreme Court, discussing this issue, stated:

"It is evident, therefore, that the Convention had before it for consideration two antagonistic propositions: One, to levy a poll tax as a revenue measure, and to make its payment compulsory; the other, to impose the tax as one of the many devices for excluding from the franchise a large number of persons, which class it was impracticable wholly to exclude, and not desirable wholly to admit. In our opinion, the clause was primarily intended by the framers of the Constitution as a clog upon the franchise and secondarily as a means of revenue." [158]

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[156] Journal of the Constitutional Convention, *op. cit.*, p. 135.

[157] *Ibid.*

[158] *Ratliff* v. *Beale*, 74 Miss. 297, 20 So. 865, 869.

Therefore the poll tax was a franchise restriction aimed at one of the distinguishing characteristics which the whites had believed that the Negro had developed as a class.

> ". . . Payment of taxes for two years at or before a date fixed many months anterior to an election is another requirement, and one well calculated to disqualify the careless." [159]

Payment of a poll tax was made a prerequisite of voting largely because it was believed that the white man was more apt to pay it than the Negro.[160] Persons otherwise competent as electors could choose to pay or not, according to their desire to qualify for exercise of the voting privilege. As Mr. Coffey, of Jefferson County, said in the Convention, "The very idea of a poll tax qualification is tantamount to the State of Mississippi, saying to the negro: 'We will give you two dollars not to vote'." [161] At a time when the Negro was not in a stable economic position, this consideration became most important. Many Negroes would not pay the poll tax because they felt that the little money which they possessed would be better spent elsewhere.

There were, however, opponents to the poll tax proposal. The protests of opponents of the compulsory poll tax showed that the poll tax was intended to curtail Negro suffrage.[162] But this was not the only group opposing the poll tax. Though editors stated that the framers of the Constitution used the poll tax to exclude "a certain irrespon-

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[159] *Id.*, p. 868.

[160] Mabry, *op. cit.*, p. 333.

[161] *Daily Clarion-Ledger*, Sept. 12, 1890, p. 1, col. 4.

[162] Williams F. B., Jr., "Public Reaction to the Poll Tax as a Suffrage Requirement in Mississippi", *Journal of Mississippi History*, Vol. XVII (1955), p. 241.

sible, unstable and disturbing element from the politics of the country," some of the Delegates opposed the tax as not being a strong enough insurance measure.[163] Judge Chrisman wanted to substitute a property or educational qualification for a poll tax. He said, "All admit that this Amendment will solve the whole difficulty—will give us a clean ballot and white supremacy in subordination to the laws of this land and the Constitution of the United States."[164] However, the poll tax was adopted by the Convention as part of the franchise provisions. It was to prove to be the most effective method for disfranchising the Negro for several decades. Thus the poll tax was to be the major method in accomplishing by indirect means what the Federal Constitution forbade doing directly. In the Mississippi Convention the Delta counties had successfully insisted on the poll tax "as their *sine qua non* knowing that as a means of negro disfranchisement, it is worth all the rest."[165]

> "Question of Suffrage. How shall we disfranchise the Senagambian? The main question, after all. If every negro in Mississippi was a graduate of Harvard, and had been selected as class orator (illustrating that morbid and diseased tendence of the fanatic minds towards monstrosities), he still would not be as well fitted to exercise the right of suffrage as the Anglo-Saxon farm laborer, adscriptus glebas, of the South and West.
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> "But to the Plan. This is not a question of intelligence *per se.* — it is a question of race. The problem before

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[163] *Id.*, p. 239.

[164] *Daily Clarion-Ledger*, Sept. 9, 1890, p. 1, col. 5.

[165] C. Vann Woodward, *Origins of the New South 1872-1913*, 1951, p. 336. (Quoting Vicksburg *Commercial Herald* from the New Orleans *Times-Democrat*, Dec. 18, 1895.)

> us is how to disfranchise the Senegambian without violating the organic law of the United States, the 'Supreme Law of the Land'. My plan is educational qualification tempered by Legislative power to remove the disability." [166]

This is the attitude with which the members of the Mississippi Constitutional Convention of 1890 launched into an educational restriction on the suffrage. A delegate to the Convention expressed the following attitude:

> "No one can have a right to citizenship against the common good. . . . The wholesale enfranchisement of the negroes was wrong, not because they are not men with every natural right; but because their votes are injurious to the State. 'It is in its last analysis, a very simple problem, we have too many ignorant, thriftless voters, and not shotguns or ballot box manipulations will determine elections." [167]

The Convention could remove the threat of power in the hands of ignorant voters by adopting an educational qualification on the suffrage. The *Clarion-Ledger* was of the opinion:

> "She is practically supreme in that respect, and can really dictate to the federal Government, concerning the voters in elections.
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> "If it be true, as she claims, that the negroes as a class are too ignorant to vote, she can easily disfranchise them by exacting a certain degree of education on the

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[166] *Daily Clarion-Ledger*, August 8, 1890, p. 1, col. 6, E. H. Bustow.

[167] *Daily Clarion-Ledger*, Sept. 12, 1890, p. 1, col. 6, Rev. J. B. Gimbull.

part of all voters. This process is so simple and at the same time so complete that no room is left for discussion. A half dozen lines will cover the whole case and put an end to all danger of negro domination." [168]

As long as there was no provision adopted which would specifically violate the Fifteenth Amendment, the Delegates felt secure that the same end could be accomplished by legislating against the characteristics of the Negro as a class without incurring the wrath of the Federal Government.

With the question of an educational qualification for the suffrage, arose a great debate on the effects of such a restriction on the illiterate white citizens of the State. Many men considered that the Negro, though able to read, was not as qualified to vote as the illiterate white. In the words of one newspaper:

"The New Orleans States in discussing the suffrage plans before the Convention opposes the proposition that the voter shall be able to read, for as it says, a child twelve years old can be taught to read. The ability to read, therefore, is not a proof of intelligence, although vaguely held so in popular notion. It is far from being evidence of that kind and degree of intelligence needed in a voter. If the reading test is applied to voters of both colors it will be found elusive. The white voter is presumed to be fit to vote until the contrary appears. The black voter is presumed to be unfit to vote until he shows evidence of intelligence. The white man is intelligent though he cannot read. The negro is not intelligent though able to read. That kind of capacity that fits a man to take part in the work of government is a hereditary characteristic of the white man of this

[168] *Daily Clarion-Ledger*, August 28, 1890, p. 2, col. 2.

country, while the want of it marks the negro and his race . . .

"There is no fear of mischief growing out of the voting of illiterate white men . . . His white birthright is a capacity to understand what is going on around him. He knows what he is doing when he votes.

"In all this the negro is essentially different, so different that rules applicable to the white man become inapplicable in his case. He is not a self-governing race. He has by nature no Aryan instinct of free will and personal independence. Want of book learning cannot make the white man like him in his moral and ethnic traits; no amount of book learning can make him like the white man." [169]

A reading requirement would sacrifice white voters along with the Negroes. Some of the white county delegates were strongly opposed to such a plan as it would upset their constituencies. Other delegates were willing to sacrifice a few white voters in exchange for the guarantee of continued white supremacy in the future. Mr. McGehee of Franklin commented on this situation:

"The trouble with some of the delegates is that they are afraid if they vote for any plan to secure white supremacy, some poor white constituency may say 'I'll vote agin him next time he runs for office.' He was in favor of any plan that will insure white control—the Campbell plan, the Calhoon Plan, the Chrisman plan, or the Committee Plan—or anything else that will insure white supremacy and the rule of intelligence in Mississippi. I will vote for an educational or property qualification if necessary, even if it does sacrifice some

[169] *Daily Clarion-Ledger*, Sept. 2, 1896.

of my white children, or my white neighbors or their children." [170]

What was considered necessary was an educational qualification that would disfranchise the Negroes, and yet permit the illiterate whites to qualify. . . .

The education qualification was carefully planned in order not to run afoul of the Federal courts. An Amendment was added to the proposal that to register to vote one had to be able to read a section of the Constitution. The Amendment stated that one be able to read, "or he shall be able to understand the same when read to him; or give a reasonable interpretation thereof." The literacy test with the "understanding clause" as a loophole for illiterate whites was proposed by Mr. Harris of Hinds County, and accepted by the Committee of Franchise as a compromise. According to its proponents, the "understanding" clause was not intended to be a disfranchising clause, but rather was designed to furnish a way to qualify illiterate whites who would otherwise be disfranchised by the literacy requirement.[171] It was, of course, urged by the white county Delegates and bitterly opposed by those from the black counties. It was realized "that it may, and probably will, be put into operation so as to preclude the negro from voting, while his equally ignorant white neighbor is allowed the privilege, appears from the fact that the inability to read does not constitute an absolute basis of exclusion; for the inspectors may allow a person to vote who can understand or give a reasonable interpretation of a section of the Constitution when read to him." [172] The "understanding" clause did provide a sure and regularized means of disfranchising Negroes as well as illiterate whites, if the group in power

[170] *Daily Clarion-Ledger*, Sept. 2, 1896, p. 1, col. 4.

[171] Kirwin, *op. cit.*, p. 70.

[172] McLaughlin, *op. cit.*, p. 831.

chose to do so. Obviously the test could be as easily interpreted to admit illiterates, Negro or white, as to reject them. Certainly despite the constitutional restrictions, illiterate voters could easily be brought into the electorate by the faction in control.[173]

The section of the Constitution which originally contained these clauses read as follows:

> "Section 5: On and after the first day of January, A.D. 1896, the following qualifications are added to the foregoing: Every qualified elector shall be able to read any section of the Constitution of this State, or he shall be able to understand the same when read to him; or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after these qualifications are established." [174]

However, R. H. Taylor of Panola County, secured the passage of an amendment to Section 5 to the effect that the educational qualification be put in force by January 1, 1892, instead of four years later. This amendment, the *Clarion-Ledger* called the "saving clause" in the entire suffrage article because "he has placed in the power of the Democrats to elect their Congressmen without Federal interference, and insured Democratic success in Mississippi." [175] Of course, the whole clause was well calculated for its double effect. First, it was said by W. S. Eskridge,

> "On the basis of the census of 1880, there is 11% illiteracy amongst the white race, whilst with the blacks the percent is seventy-six. This scheme would therefore disfranchise only eleven whites in one hundred.

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[173] Kirwin, *op. cit.*, p. 71.

[174] Journal of the Constitutional Convention, *op. cit.*, p. 136.

[175] *Clarion-Ledger*, Sept. 25, 1890.

whilst it would reduce the black vote seventy-six in one hundred. The advantage therefore, in favor of the whites would be very considerable." [176]

The automatic effect of this clause would be to disfranchise a great many more Negroes than whites, as shown by the census statistics which were readily available. And secondly, the "understanding" clause could be used to permit a large number of illiterate whites to register while the same clause could be used to deny illiterate Negroes the right of the ballot. There was a general understanding that the interpretation of the Constitution offered by an illiterate white would be acceptable to the registrars, whereas that of a Negro would not be accepted.[176a] Senator George advocated that clause as a means to secure the strength necessary in the Convention for the adoption of the Franchise Article of the Constitution. It was used by him as a *modus vivendi* in the critical period of the Convention when it was feared that no concurrence of views could be reached on any effectual measure by a majority of the Convention.[177]

There was a great deal of criticism levelled at the "understanding" clause of the Constitution. The newspapers were most critical of the chicanery which it might countenance. "Every State suffers more or less from corrupt practices at elections, but it was reserved for the State of Mississippi to make its very Constitution the instrument and shield of fraud." "We don't see where this would be any improvement of ballot box stuffing." [178] The general

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[176] *Clarion-Ledger*, Sept. 16, 1890.

[176a] *Clarion-Ledger*, Oct. 30, 1890.

[177] Johnston, *op. cit.*, p. 229.

[178] Wharton, *op. cit.*, p. 214. (Quoting Port Gibson *Revelle*, 9 Sept., 1890 and *Clarion-Ledger*, Sept. 22, 1890.)

conclusion was that the law was either fantasy or fraud, although the elimination of fraud had been one of the chief purposes in calling the Convention. The disgust was not limited to the newspapers. Some members of the Convention strongly opposed the provision. This feeling can be fairly summarized in a speech made by Mr. Eskridge:

> "My objection to this qualification I will state briefly. I fear sir, it will lead to trickery and fraud. The people of the State are looking to us expecting at our hands to settle the suffrage question on such a basis as will establish beyond doubt white supremacy and place the State above trickery and fraud at the ballot box. This is in our power to do if we have but the courage and manhood to do it.
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> "Adopt this qualification and it places in the hands of the officer who is to apply the test the power to defraud and to disfranchise. He may read to one man a very short and plain section of the Constitution and ask him if he understands it; he receiving a satisfactory answer and register him as a qualified voter, then comes the next man who cannot read; he reads to him a longer and complicated section and propounds the question, do you understand it? The voter answers unsatisfactorily, the officer says, you are not competent and refuses to register him. I give this single example as an illustration of how rather it can be worked to the great wrong of the citizen. Now, sir, is our time and opportunity (and the people are looking to us with anxious expectation) to elevate the proud Commonwealth of Mississippi above the trickery and fraud and permanently place her on a plane that will in the future protect her fair fame from destruction and defamation in the conduct of her elections." [179]

[179] *Daily Clarion-Ledger*, Sept. 16, 1890, p. 4, col. 3.

Several scholarly groups as well as individuals dared to comment on the "understanding" clause. The *American Law Review* commented:

> "It is quite apparent that this clause was never intended to be carried out faithfully. It will be so administered as to exclude negro voters, hardly one of whom will be eligible under it, and so as not to exclude the ignorant white voter. The last qualification, the ability to give a reasonable interpretation of any clause of the Constitution of the State, would exclude nearly all lawyers and judges in the State. In this manner the people of Mississippi endeavor to solve the appalling problem of carrying on civil government with a mass of voters easily corrupted and so stolid and ignorant as not to be able to understand the first principles of their political institutions." [180]

Andrew McLaughlin added his own condemnation.

> "It is apparent that an inspector may very easily reject as unreasonable an interpretation from a colored man, and accept one no better from a white man. Such discrimination would be very hard to discover. Yet that the United States government would have the legal right to prevent such virtual disfranchisement on account of race and color may be inferred, perhaps, from the decisions of the United States courts in the interpretation of the clause of Fourteenth Amendment which forbids any state from denying to any person the equal protection of the laws. The court has in more than one instance given relief where a law, valid on its face, has been so administered as to deprive certain persons of equal protection of the laws.

[180] Thompson, *op. cit.*, p. 42. (Quoting Am. Law Review of Jan., Feb. 1892.)

> "What can be done about it when there is no legal evidence as to how many are actually disfranchised, inasmuch as the new Constitution allows to vote those who can understand the Constitution or explain it? The provision is certainly a shrewd one." [181]

The members of the Constitutional Convention were indeed shrewd when they framed the educational qualifications of the ballot. A new method had been devised to sustain white supremacy and disfranchise a great number of Negroes. The educational qualification was again to become a prominent method of preventing the Negroes from registering to vote many years later when it was made more stringent. But for its day, the educational provisions of the Mississippi Constitution of 1890 were most effective.

There were several additional qualifications along with the poll tax and literacy test which were now required of the voters. These others were directed at the accentuated distinguishing characteristics of the Negroes as a class. Among them was the unusually long residence requirement. Judge H. F. Simrall urged the requirement of one year's residence in the precinct as a prerequisite for voting. He frankly explained that the reason for his proposal was the "disposition of young negroes . . . to change their homes and precincts every year." [182] The condition of residence in the election precinct for one year would exclude a large class of voters who were thriftless and who had no steady employment, people who were constantly moving from place to place.[183] It was recognized that these were characteristics which the Negro race had acquired by reason of

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[181] McLaughlin, *op. cit.*, p. 831 and p. 837.

[182] *Daily Clarion-Ledger*, Sept. 18, 1890.

[183] Johnston, *op. cit.*, p. 227.

its previous condition of servitude and dependence. Therefore, with voting qualifications aimed at these characteristics, the members of the Constitutional Convention had found another method of disfranchising the Negro without running afoul of the Federal Government.

Section 241 of the Constitution of 1890 was that part of the Franchise Article which enumerated the qualifications which were required of all voters.

> "Section 241: Every male inhabitant of this State, except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty-one years old and upwards who has resided in this State two years, and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered, as provided in this article, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy, and who has paid, on or before the first day of February of the year in which he shall offer to vote, all taxes which may have legally been required of him, and which he has had an opportunity of paying according to law, for the two preceding years and who shall produce to the officers holding the election satisfactory evidence that he has paid said taxes, is declared to be a qualified elector; but any minister of the Gospel in charge of an organized church shall be entitled to vote after six months' residence in the election district, if otherwise qualified." [184]

It is evident from a reading that there are many provisions which were directed against the peculiar characteristics of

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[184] The Constitution of the State of Mississippi of 1890. Article 12, section 241.

the Negro. The requirement that one must produce satisfactory evidence that he has paid all his taxes for the past two years was aimed at the careless and those unaccustomed to the preservation of records. The provision which excludes one from the franchise for having been convicted of certain crimes looked toward the furtive offenses to which the criminal members of the Negro community were alleged to be given, rather than to the more "robust" crimes of the whites.[185] The section required that in order to be a qualified elector, one must be duly registered.

The sections of the Franchise Article which outlined the registration requirements also offered protections of white supremacy in Mississippi. Sections 249 and 251 on registration provided the following guarantees:

> "Section 249: No one shall be allowed to vote for members of the Legislature or other officers who has not been duly registered under the Constitution and laws of this State, by an officer of this State, legally authorized to register the voters thereof. And registration under the Constitution and laws of this State by the proper officers of this State is hereby declared to be an essential and necessary qualification to vote at any and all elections."[186]

> "Section 251: Electors shall not be registered within four months next before any election at which they may offer to vote; but appeals may be heard and determined and revision take place at any time prior to the election; and no person who, in respect to age and residence, would become entitled to vote within said four

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[185] *Ratliff v. Beale*, *supra*, p. 868.

[186] The Constitution of the State of Mississippi of 1890, Article 12, section 249.

months, shall be excluded from registration on account of his want of qualification at the time of registration." [187]

There was a motive in making registration by the officers of the State a qualification of suffrage. This is more important than first appears. This was designed to prevent the Federal Government from stepping in to control the registration of voters.[188] This was a safeguard of white supremacy, for if Federal Officers stepped in to register voters, they would still be unable to vote under the laws of the State. Section 251 requires that the registration of voters eligible to vote in an election be at least four months prior to the election. This condition excludes many voters who are indifferent, and who take little or no interest in public affairs. This provision, like many of the others was directed at those characteristics peculiar to the Negro as a class. Judge Ethridge said of this provision, "In other words, it was part of the scheme to acquire white supremacy, and the convention was searching the field of expedients for methods to accomplish that end, which this section was one of the factors in obtaining." [189]

The Constitution provided in Section 242 that "The Legislature shall provide by law for the registration of all persons entitled to vote at any election . . . " [190] Of course, the registrars were given great discretionary power. For it was they who would determine whether an applicant to register to vote properly met the required qualifications. Registration authorities determine whether applicants

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[187] *Id.*, Article 12, section 251.

[188] McNeilly, *op. cit.*, p. 136.

[189] Ethridge, *op. cit.*, p. 435.

[190] Mississippi Constitution of 1890, Article 12, section 242.

meet literacy and understanding tests and thus had the power to function as the principal governmental agency for Negro disfranchisement. There were some very strong attacks made on this pow r To particularize, the extraordinary control of the law and the law officers over the registration and qualification of voters is a facility of oligarchy or ring-sway; which is so much subtraction from pure representative, *vox populi*, politics." [191]

There was, however, something of a saving grace in the registration provisions of the Constitution of 1890. Section 248 stated:

> "Suitable remedies by appeal or otherwise shall be provided in law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same." [192]

This means that if someone felt that he was improperly denied the right to vote he could appeal the decision of the registrar. But in actuality, this provision to insure fairness in registration of voters had little meaning to the Negro. It was very doubtful that if he was denied the right to vote in the first place that he could get a fair hearing on appeal. Moreover, this provision was more likely a loophole to insure that whites would be able to register to vote.

These were the qualifications of the franchise that the Committee on Franchise reported favorably on. These several suffrage requirements combined were deemed sufficient for the end in view. Isiah Montgomery, the only Negro member of the Convention, and a member of the Committee on Franchise, addressed the Delegates stating what he believed to be the work to be done. He gave statistics as to

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[191] McNeilly, *op. cit.*, p. 137.

[192] Mississippi Constitution of 1890, article 12, section 248.

what he believed the effects of the Committee Reports would be if it was adopted. The *Clarion-Ledger* gave the following report:

"Before becoming a member of this Convention, he fully stated to his constituents his view of the work to be done—that we must restrict the franchise by prescribing such qualifications for voters as would reduce the negro vote considerably below the white vote of the State—such restrictions of course, to farily applied, and only effecting the colored vote to a greater extent because of their inferior development in civilization. He thinks now, as he did before the Convention, that Congress will interpose no objections provided such restrictions are honestly imposed for the bringing about a fair solution of the great problem.

"The speaker gave the following as the most reliable data he could obtain of present population in the State:

White	594,453
Black	949,724
Total	1,543,887
Black voters	189,884
White voters	118,890
Negro Majority	70,994

"This vote, he said, though nominally classed as Republican and Democratic is practically divided on the race line. He claimed that the plan reported by the Committee will produce the following result:

Present white voters	118,890
Plan will restrict	11,899
and leaves net white vote	107,001
Present voters, Negro	189,884
Plan will restrict	123,334
and leaves net negro vote	66,550
Leaving a white majority of	40,451." [193]

The calculated effect of the franchise provisions of the Constitution, if honestly applied was enough to guarantee white supremacy in politics. Yet, from his service in the Convention and in the Committee on Franchise, and from the daily declarations of such men as Judge Calhoon, Montgomery was bound to have known that all calculations based on an honest application of the franchise provisions were meaningless. He knew that it was the intention of the Democratic majority to eliminate Negroes with or without education and to remove no white voter from the rolls.[194] Even though the plans adopted were intended to and calculated to reduce the Negro majorities to a negligible quantity, there was some discontent and feeling that further and ultimate guarantees should be obtained to insure white supremacy in Mississippi.

The ultimate guarantee of white supremacy would mean the repeal of the Fifteenth Amendment. To this end, on Sept. 30, 1890, the following report was made to the President of the Constitutional Convention:

> "Your special Committee to whom was referred the accompanying preamble and resolutions with reference

[193] *Daily Clarion-Ledger*, Sept. 16, 1890, p. 1, col. 3.

[194] Wharton, *op. cit.*, p. 212.

to negro suffrage and the Fifteenth Amendment of the Constitution of the United States, would beg leave to report that we have considered the same and recommend the adoption thereof as presented.

Whereas, there are in the State of Mississippi, and some of the States of the United States in approximately equal numbers, two distinct races or types of mankind, the white and the negro; and

Whereas, these two races, though friendly and homogeneous for all business and industrial purposes, are widely separated by race instincts and prejudices in all political and social matters; and

Whereas, we are without any well founded hope of a change, in respect to the political relations of the two races, but in our opinion, they will ever be divided in all political contests in the main, on race lines, rather than on economic and other questions of common interest to them; and

Whereas, with such a condition, the one race or the other must have charge and control of the governments of such states, and to do so there will be ever recurring conflicts of greater or less magnitude between them; and

Whereas, a government thus maintained, existing and resting upon such a condition must of necessity be without permanence, efficiency or stability; and

Whereas, such condition of insecurity is not only a great political or social evil, but also greatly impedes all industrial development; and inasmuch as the *white people only are capable of conducting and maintaining the governments* in such States, giving security and protection to the whole people and prosperity thereof,

the negro race, even if its people were educated, being wholly unequal to such great responsibility, if they should come into control of such governments, therefore be it:

Resolved, by the People of the State of Mississippi, in this its Constitutional Convention assembled, that it is our deliberate judgment and opinion that the true and only efficient remedy for the great and important difficulties arising out of the conditions set forth in the foregoing preamble, lies in the repeal of the XV Amendment of the Constitution of the United States, whereby such restrictions and limitations may be put upon negro suffrage, by the several States, as may be necessary and proper for the maintenance of good and stable governments therein;

Resolved, that we request that the Congress of the United States cause to be submitted to the several States, a proposition to repeal said XV Amendment of the Constitution, and that we will cheerfully accept as a condition to such repeal such restriction in representation in the House of Representatives of Congress from Mississippi as may be reasonable and just in view of the diminution of the number of voters in the State subsequent upon such repeal of said XV Amendment." [195]

This was the attitude of the Constitutional Convention of Mississippi and of its members. However, if they could not have *de jure* repeal, with the adoption of the new suffrage provisions, the Convention would achieve a virtual *de facto* repeal of the Fifteenth Amendment.

Negro disfranchisement would help to guarantee white political supremacy in Mississippi. In addition the Consti-

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[195] Journal of the Constitutional Convention, *op. cit.*, pp. 303-04.

tutional Convention of 1890 established safeguards of white political control in the State government, even if all the Negroes could register and vote. The institutions established by constitutional provisions were made flexible enough to make ineffectual any possible number of Negro votes in the future. The system of legislative apportionment and the electoral college system for electing the Governor which were adopted made certain that the Negro could control neither the Legislative or the Executive Branch of the State government. The first step in creating the final solution to the Negro problem was a legislative apportionment creating a majority of white constituencies, the legal basis and bulwark of the design of white supremacy in a State with an overwhelming and a growing Negro majority.[196] The county apportionment of representatives in the legislature was so fixed in the Constitution of 1890 that a clear majority lies with those counties having a preponderance of white population. The counties of the State were divided into three divisions or groups. The white counties comprised two of the divisions and the black counties the third. The Constitution restricted reapportionment to permit changes within divisions (i.e. between counties which were white comprising a division or between black counties comprising another division) but not between divisions (i.e. between black counties in one division and white counties in another). In this way control of the Legislature was fixed permanently with the white counties.

An electoral college system was established for choosing the Governor. Electoral votes were distributed on the basis of county representation in the State House of Representatives. The white counties were guaranteed a majority of electoral votes because of the legislative apportionment. To win the election, a candidate for Governor had to re-

[196] McNeilly, *op. cit.*, p. 133.

ceive a majority of both the popular and the electoral vote. If he did not receive a majority of both, an election would be held in the House of Representatives between the two candidates receiving the highest number of popular votes. The candidate receiving the higher number of votes in the House was elected Governor. Since the white counties held a majority of the popular vote and a majority of the electoral votes, they would always be able to control the gubernatorial election. White control thereby rested in the State offices.

The long range problem of the possibility of Negro political power was met by adopting the device of the electoral vote and by an apportionment plan which would assure control of the lower House of the State Legislature to counties having a preponderance of white population. An analysis of these constitutional provisions shows that the counties with a preponderant white population have a clear majority of representatives and electoral votes for the State as a whole, and therefore, have complete control of the law-making and law-enforcing branches of the State Government. This plan assured and safeguarded white supremacy in 1890.

At the Conclusion of the Constitutional Convention, Judge S. S. Calhoon made an address.

> "Our mission here has been accomplished as best it could be upon the adjustment of the various opinions and interests of the various sections of Mississippi. Restrained by the Federal Constitution, we have tried to secure a more enlightened election franchise without race discrimination or injustice. We knew when we assembled that the Nation will yet learn that it is hardly possible for any two of the distinct type of mankind to co-exist with divided political sovereignty. Political partnership has naturally prevented an impartial view of the situation. This we cannot avoid.

We say to our brethren of the North, East, and West, that we are . . . willing to do all things except yield up the common civilization of our common country, which civilization was constructed, has been maintained, and can be continued only by the white race. . . .

Withdrawn from the development of white civilization the negro race seems unable to retain even its own initiative requirements. It seems unfit to rule. . . .

Yet confronted with this sad trial, it is our duty under the Constitution of the United States to undertake the great task of carrying on intelligent Republican government in Mississippi with his full cooperation, and with his rights and franchise as guaranteed by the organic Federal compact not only unimpaired, but fully protected.

To this state of temperament within this body is to be attributed the practical success of the Convention, to which all of the Delegates, singly and collectively, have contributed.

In my judgment, the material and moral advancement of the people of both races here depend on the predominance in government of that virtue, and intelligence, which for the present at least, can come only from that race which in the past has shown a capacity for the successful administration of free institutions. That race alone can now safely exercise the function of ruling with moderation, and justice, and accomplish the great purpose for which governments are established." [197]

The Constitution of 1890 was adopted in Convention on November 1. Thus, the work of the Convention was happily

[197] Johnston, *op. cit.*, pp. 224-25.

ended, and the elective franchise was placed upon what was considered to be a safe basis.[198] The Convention had thus finally overcome every difficulty. After careful and patient investigation it had disregarded the Act of Congress of 1870 and circumvented the provisions of the Fourteenth and Fifteenth Amendments. Furthermore it had devised a Constitutional scheme which would prove effective in relieving the State for a long time from the threat of Negro suffrage, while at the same time safeguarding white supremacy by other means.

One can scarcely read the debates of the Convention and the press discussions without concluding that the intention of those in authority was to accomplish by indirect means what the Federal Constitution forbade doing directly. Judge Thompson in discussing this, said:

> "I have heard attributed to a distinguished United States Senator, who would have been glad to come to a different conclusion, that this Constitution demonstrated that Anglo-Saxon ingenuity could accomplish anything; that the provisions of it on the subject of suffrage was (*sic*) a practical repeal of the Fifteenth Amendment of the Constitution of the United States, and yet the result was effected in such a way that its legality could not be successfully denied." [199]

The Mississippi Constitutional Convention of 1890 contained some of the ablest statesmen in the United States, men who knew that white supremacy could be legally established only by indirection. Anything aimed directly at the Negro, as a race, would be self defeating, all courts being required to uphold the Constitution of the United States

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[198] *Id.*, p. 226.

[199] Thompson, *op. cit.*, p. 43.

and to nullify everything which came in conflict with it.[200] In short, as was later stated in *Ratliff* v. *Beale*, by the Mississippi Supreme Court, the Convention had evolved a Constitution which discriminated not against the Negro but against his characteristics and limitations. Be that as it may, the Mississippi Constitutional Convention had substituted a more orderly and apparently, a more legal method of disfranchising the Negro. This could now take the place of the old system of fraud, intimidation, and violence.[201] Illiterates, tax-delinquents, criminals and certain other classes, as classes, embracing nearly all the Negroes and comparatively few whites, were disfranchised. As stated in 1892 by the constitutional scholar, Andrew McLaughlin, "There is no longer a doubt that the Fifteenth Amendment is disregarded in practice where it is not nullified on the face of the State law."[202]

During the Convention there was some question as to just how effective the franchise provisions recommended by the Committee on Franchise would be in reducing the Negro vote. A member of that Convention commented:

> "Then sir, after sifting and dissecting this report I do not find in it that settlement of the suffrage problem that will furnish certain fixed, stable and permanent white supremacy in this state; its plans rest too much on contingency and accident, and therefore, in my judgment, can endure but for a few short fleeting years when we will again be subject to the same unrest, disquietude, danger and peril that now environ us."[203]

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[200] Neal, E. F., "Mississippi's Primary Election Law", *Publications of the Miss. Historical Society*, VIII (1904), p. 24.

[201] Mabry, *op. cit.*, p. 333.

[202] McLaughlin, *op. cit.*, p. 828.

[203] *Daily Clarion-Ledger*, Sept. 16, 1890, p. 4, col. 4.

That analyst did not know how wrong he actually would be. Though the educational test was not applied until 1892, almost immediate results from the adoption of the new Constitution were evident. White Mississippi had spoken in no uncertain terms. Delegates on the floor of the Convention had openly proclaimed their intention of disfranchising Negroes. The moral effect of this was enormous. Three days after the Constitution was approved by the Convention, the regular State election was held. There were no reported disturbances or charges of intimidation or fraud. Yet only about thirty percent of the normal Negro vote was cast.[204] Rebuffed by unfriendly registrars, frowned on by the mass of the white population, and absolutely forbidden to support any candidates save of a party based on white supremacy, the Negro voters found it, in the words of one of their leaders, "A mighty discouraging proposition."[205] More and more of them, as time went on, simply abandoned the effort. As to the moral effects, it is to be noted that the fact of disfranchisement was accepted by the masses of the "sons of Ham" without show of sorrow or sign of resentment. Suffrage had come to them unsolicited; it departed from them unregretted. Having had their rights suppressed for so long and having been continually crushed, the Negroes could not rise in protest.

The demoralization of the Negro, however, was not the only harmful effect or evil consequence of the Constitution of 1890. There was also the inevitable relaxation in political interest, incident to the relief afforded through Negro disfranchisement. Another secondary evil consequence was that with the Negro no longer voting, the value of the constitutional provisions became obscured to the public. Measures, irksome in themselves, lose the sanction of law as the

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[204] Mabry, *op. cit.*, p. 332.

[205] Wharton, *op. cit.*, p. 216.

vital necessities of their adoption diminish and disappear. Then there comes the demoralization of a commonly violated, dead letter law.[206]

In theory, the laws would apply equally to both races. But in practice, they would not because the legislation was designed to attack the "peculiar racial characteristics" and limitations of the Negroes. When the new registration rolls were published in 1892, of the 76,742 voters, only 8,615 were Negroes.[207] By 1896 the white registration had increased to 109,337, while the number of Negro voters had reached only 16,234.[207a] The provisions on the franchise had proved to be even more effective than had been earlier calculated. From 1890 the legal Negro votes, and consequently the Republican party, have been a negligible factor in statewide elections. But for a dozen years after 1890, the Negro continued to be of considerable influence in black county elections. However, if the Negro ceased to be a direct influence in politics after 1890, indirectly his influence has been incalculable. His mere presence has been an intangible but tremendous influence on the behavior of Mississippi's white electorate.[208]

The reduced electorate in Mississippi after the Constitution of 1890 was adopted seems to have been caused more by the poll tax than by the educational qualification. Mayre Dabney, twenty years after the Constitutional Convention, addressed a reunion of its Delegates. He spent some time talking about the suffrage provisions which had been drafted. He declared that the "understanding" clause

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[206] McNeilly, *op. cit.*, pp. 137-38.

[207] Kirwin, *op. cit.*, p. 72. (Quoting Appleton's Cyclopedia, 1892, p. 472.)

[207a] *Report of the Secretary of State to the Legislature of the State of Mississippi*, 1896, p. 167.

[208] Kirwin, *op. cit.*, p. 72.

had not disfranchised as many Negroes as the poll tax, and he referred to his study of the tax records.[209] Dabney found that a very small percentage of the Negroes had paid their taxes. It was estimated that the ratio of whites to Negroes on the delinquent rolls in some counties was about one to eighteen.[210] Dabney concluded that the educational requirement was "of but little effect or value, and constituted but a small factor, if any at all, in precluding the Negro from voting."[211] The avowed intent of the "understanding clause" was to permit illiterate whites to qualify despite their illiteracy. The circuit clerks he had interviewed said that they rarely refused to register a qualified elector because of the understanding clause. It was their belief that the poll tax was the main factor disfranchising Negroes. Thousands of delinquents proved that point.[212] The poll tax disfranchised nearly all of the Negroes in Mississippi. It is evident, however, that in general voting in Mississippi was greatly reduced in the decades following 1890 and that the agency which was most effectual in accomplishing this end was the poll tax. The number of votes cast in the Gubernatorial election decreased from 64,339 in 1895 to 48,320 in 1899 to 32,191 in 1903.[213] The provisions of the 1890 Constitution indeed had had their effect.

The poll tax and educational clauses of the franchise provisions of the Constitution were basic limitations on electors. In Mississippi in 1902, some 30,000 white people had not registered. Of 198,000 Negroes in the State, 92,000

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[209] Williams, *op. cit.*, p. 242.

[210] Kirwin, *op. cit.*, p. 74.

[211] *Ibid.* (Quoting Dabney, p. 14.)

[212] Williams, *op. cit.*, p. 242.

[213] *Id.*, p. 246.

were literate, but less than 20,000 were registered to vote.[214] Even with the elimination of the Negro vote, corruption and fraud in the State government had not been ended. And too, some felt that even though few Negroes were registered voters, more would be able to qualify in the future. It was written in 1902 that:

> "It was the opinion of the leading men of the State at that time, (1890), as it is the consensus of opinion in the State at the present time, that the number of negroes who are being qualified under the educational conditions of the suffrage by the school facilities afforded by the State will continue to increase, and that it may be only a question of time when there will again be a majority of qualified negro voters in the State, and when it will become necessary to place further limitation on the elective franchise in order to secure the proper administration of the public affairs of the State." [215]

Something was wrong in Mississippi; a change was needed.

IV.

Selection of candidates for office were made by a party convention. The delegates to these conventions were apportioned on the same basis as legislative representation. This meant that the planters, who controlled the Legislature, would also control the nominating convention. This system was apparently not working well. The Government of Mississippi was in worse shape in 1898 than it had been during the period of radicalism.[216] *The Nation* wondered

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[214] Cory, C., "Suffrage in the South: Six New State Constitutions", *Review of Reviews*, XXV (1902), pp. 717-18.

[215] Johnston, *op. cit.*, p. 241.

[216] Kirwin, *op. cit.*, p. 77.

about the high taxes, the lack of public improvements, the extra legislative sessions, and the necessity of investigating official drunkenness: "This is certainly a pretty bad showing," the article concluded, "for that 'Caucasian rule' from which so much was promised."[217] This was also a period when the dirt farmer asserted himself in State politics in a revolution which began with the Constitution of 1890. The dirt farmer had been agitating for a primary election law in Mississippi. Such a law would take some of the political power away from the planter. Complete control of the nomination of candidates by the planters, which existed in these conventions, would be broken.

The Constitution of 1890 had provided in Section 247 that "(T)he Legislature shall enact laws to secure fairness in party primary elections, conventions, or other methods of naming party candidates."[218] The Legislature could pass a primary law if enough support could be gained for it. Finally a primary election law was approved on March 4, 1902. This was the greatest triumph of the dirt farmers. The law provided that party nominations in Mississippi should thereafter be made by primary election on a date to be fixed by the State Executive Committee of the party, but not later than August 10. The law was applicable to nominations of all county and State officers.

The primary election law gave the power to exclude persons or groups of persons by regulations to the State Executive Committee of the party holding such primary.[219] The Democratic State Executive Committee met in Jackson on June 22, 1903, and adopted a resolution providing "that every white Democrat who will be entitled to vote at the general election in November, 1903, be permitted to vote at

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[217] *The Nation*, LXVI (1895), p. 398.

[218] Mississippi Constitution of 1890, section 247.

[219] *Miss. Code* of 1906, Chapter 111, Section 3717.

the primary election to be held by the order of this Committee." [220] This regulation legally excluded all Negroes from the Democratic primary, and the rule was not changed by succeeding executive committees. Since nomination by the Democratic Party in Mississippi was equivalent to election in all state-wide contests and most local elections, debarment from the primary was in effect disfranchisement.[221] Thus an additional hurdle was placed between the Negro and the franchise. For even if he could overcome the Constitutional restrictions and unconstitutional intimidations to thereby secure the right to vote at the general election, the "real" election had already been decided in the Democratic primary, three months before. This regulation was to prevent the Negro from voting in any meaningful election in Mississippi until 1944.

Even with the effective exclusion of the Negro from the ballot, many Mississippians were willing to go even further in making sure that the Negro would not qualify to exercise the franchise. James K. Vardaman, a Governor of the State, urged exclusion of the Negroes from the schools in order to make sure that they did not qualify for the polls. This, too, was what many saw as the only salvation for an impoverished school system.[222] He urged other measures as well;

> "The negro should never have been trusted with the ballot. He is different from the white man. He is congenitally unqualified to exercise the most responsible duty of citizenship. He is physically, mentally, morally, racially, and eternally the white man's inferior. There is nothing in his individual character, nothing in his achievements of the past nor his promise for the

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[220] *Clarion-Ledger*, June 23, 1903.

[221] Kirwin, *op. cit.*, p. 131.

[222] *Id.*, p. 310.

future which entitles him to stand side by side with the white man at the ballot box. . . .

"We must repeal the Fifteenth and modify the Fourteenth Amendment . . . Then we shall be able in all over legislation to recognize the negro's racial peculiarities, and make laws to fit them. . . ." [223]

Neither the plan of excluding the Negroes from the public schools nor the plan to effect changes in the Constitution of the United States was ever adopted. However, on the issue of the Negro and the schools, the inequities between the races became patently obvious. The money spent *per capita* to educate the children and pay teachers' salaries is allocated in such a way as to guarantee that the education of the Negro child will never be the equivalent of what the white child receives. In effect the Negro was not denied the ballot because he was excluded from the public schools, but rather because the education he received and still receives is far inferior to that given whites. The Negro, whose presence in such large numbers in Mississippi has given a distinctive influence to its politics, has also given a distinctive influence to its racially separate school systems. The Negro was to become the neglected man in Mississippi, although not the forgotten man.[224]

Again in 1912, the white people of Mississippi were warned that they must stand united against the threat of Negro political power. A pamphlet, *Shall We Test the Validity of the Fifteenth Amendment?* appeared, which stated:

"The negro is now permitted to vote in those States only where his political influence is not supposed to be too dangerous. . . .

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[223] *Clarion-Ledger*, April 27, 1907, p. 4, col. 2. (Quoting the Vardaman "idea" from the *Saturday Evening Post*.)

[224] Kirwin, *op. cit.*, p. 134.

In 1911, during his campaign for re-election to the United States Senate from the State of Mississippi, the senior Senator assured the people that the present arrangement excluding the negroes from the polls was satisfactory to them.

"(Negroes) No, they are not satisfied, and they are always hoping to recover the exercise of their right to vote. . . . Take for example the situation in Mississippi. The franchise clauses of the new Constitution of that State were unquestionably the earliest and most efficient contrivance devised to keep the negro from exercising the right to vote. But they are a temporary expedient at the longest. So said the author or authors whose ingenuity and statesmanship originated the device at the very time it was resorted to.

And now after the lapse of little more than twenty years it could easily be made inoperative and futile; for there are more than enough literate negroes in Mississippi today who could become qualified voters under the Constitution to hold the balance of power between the whites, if we should divide on political issues." [225]

It is only fair to assume that the author's statement is true that many Negroes could meet the qualifications required to become voters but that they were not voters at the time. This simply meant that if the whites remained united, the Negroes would not be allowed to vote even though they were qualified to meet the Constitutional requirements for the suffrage. And indeed, this was the situation which did exist.

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[225] Leavell, W. H., *Shall We Test the Validity of the Fifteenth Amendment?* Memphis, E. H. Clarke & Brother, 1917, pp. 4, 7, and 8.

The Nineteenth Amendment to the Constitution of the United States was declared ratified on August 26, 1920.

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.
>
> Congress shall have the power to enforce this article by appropriate legislation."

This article extended the right to vote to women. The State of Mississippi had rejected it, but State laws were passed in 1921 to comply with the Federal Constitution and to permit women to vote. However, it was not until 1935 that Mississippi finally amended its Constitution to include women as being eligible to vote. This was done by changing the phrase, "every male inhabitant" in Section 241 to "every inhabitant."

At the same time, a provision of the same section was changed so that one had to have paid *all poll taxes* which may have been legally required of him, rather than to have paid *all taxes* which may have been legally required of him, as had been provided for in the 1890 Constitution.[227] The amendments to Section 241 of the State Constitution were adopted in an Extraordinary Session of the Legislature. The requirements which had to be met in order to be eligible to vote had been made easier. The electorate had been expanded, but the effect of this change on the Negro was only slight because he still could not vote in the Democratic primary election.

The State legislature acted in 1936 to make even more stringent the primary election laws of the State. Chapter 320 of the Laws of 1936 affected the poll tax requirements which had to be met to qualify to vote in a primary. The

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[226] Nineteenth Amendment to the Constitution of the United States.

[227] Mississippi Constitution of 1890, section 241, amended by Chapter 117, Laws of Mississippi, Extraordinary Session, 1935.

change adopted required that to vote in a primary, one had to have paid his or her poll tax annually on or before the first day of February of the year in which such poll tax was due for the two years prior to the time such person offers to vote, and such person must have in his or her possession at the time he or she offers to vote, poll tax receipts for the two preceding years. This change was significant in the sense that for the first time it required that one had to have paid his poll tax on time, before the first of February, annually for two years before he could vote in a primary election. The new requirement was stricter than that for the general election. At that time, the effect of this law on the Negro was still negligible because the Negro was barred by regulation from voting in the Democratic primary. However, today, it is another stumbling block in the path of the Negro who desires to exercise the most important right of citizenship.

When the United States Supreme Court in *Smith* v. *Allwright*, 321 U. S. 649 (1944), held unconstitutional the exclusion of Negroes from the Democratic primary in Texas, there was a great cry for the adoption of new measures to circumvent the decision in Mississippi. One of the chief legal safeguards of white supremacy in the State could no longer be used. The Negro could no longer specifically be barred as a class from voting in the most important election held in the State. The reaction of the State Legislature to the court's decision was to pass new laws to accomplish in effect what the old law had done. These laws did not specifically exclude Negroes, but did establish rules and permitted the establishment of regulations by the party state executive committee with which compliance was required as a condition of being eligible to vote in the party primary and with which the Negroes as a class could not comply.

The first new legislation designed to circumvent the Supreme Court ruling in the *Smith* case was passed in 1947.

In that year, Negro voting registration was slightly over one percent of all adult Negroes.[228] The extraordinary session of the Legislature in 1947 passed House Bill #36 which authorized the party state executive committee to make regulations for primary elections and to hold a new registration.[229] This bill gave the committee the power to make regulations which could discriminate against the Negro. By holding a new registration of party members, they were able to purge the old lists while requiring the registrants to meet the new regulations. The Legislature also passed House Bill #38 which was adopted on the same day. This bill said that to be eligible to vote in a primary a person must intend to support the nominations made in the primary and must be in accord with the principles of the party. The law further provided that any member of the party holding such primary, or any primary election officer, may challenge any person offering to vote, and cause him to answer under oath and in writing, if demanded by the challenger. Questions could be asked of the voter relating to his qualifications and as to whether or not he was in accord with the principles of the party, as stated in the State Convention of the party.[230] This Act would restrict Negro participation in the primary because the party could make principles so repulsive to the Negro that he could not possibly join. Furthermore it permitted intimidation of the Negro by both members of the party and primary officials. These laws were simply safeguards to assure that few Negroes, if any, would be able to vote in the Democratic primary.

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[228] Bettersworth, J. K. and Evans, W. J., *You and Your Vote, Citizen's Handbook*, #1, State College, Mississippi, The Social Science Research Center, May 1954, p. 18.

[229] Sessions Laws of Mississippi State Legislature, Extraordinary Session, 1947, House Bulletin, #36.

[230] *Id.*, House Bulletin, #38.

The Mississippi Legislature of 1948 passed a law which additionally restricted the ability of Negroes to vote in the Democratic primary. House Bill #439, adopted during the regular session of that year added to H. B. #38 of 1947 that no person shall be eligible to participate in any primary election unless he has been "in accord with the party holding such primary within the two preceding years" and "unless he is not excluded from such primary by any regulation of the State Executive Committee of the party holding such primary." [231] This law could have several effects which would be adverse to the Negro. The two year requirement could have the effect of a "grandfather" clause in the sense that it would have been very difficult for the Negro to have been in accord with the party for the two preceding years, thereby making him ineligible to vote in the primary. The clause on party regulations was also a device which might indirectly be used to exclude the Negro from the Democratic primary.

These laws permitted Mississippi to get around the 1944 Supreme Court ruling that it was unconstitutional to exclude Negroes from the Democratic primary. By indirection in attacking the Negro, the legislature could circumvent the ruling in almost the same way that the Constitutional Convention of 1890 was able to disfranchise Negroes without violating the Fourteenth and Fifteenth Amendments. Mississippi was determined to keep its important election, the Democratic primary, as uncolored and lily white as possible.

In 1948 there was also an attempt to amend the State Constitution by adding a provision that in addition to all the other qualifications required of a person to be entitled to register, such person shall be of good moral character.

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[231] Sessions Laws of Mississippi State Legislature in Regular Session, 1948, House Bulletin, #430.

This would give the registrar increased discretionary power in refusing to register an applicant. The term "good moral character" is so vague that it permits a wide variance of interpretation. This would have been an additional basis for refusing to register Negroes who had made the attempt to exercise their right to vote. The politicians believed that additional safeguards were needed in Mississippi to protect white political supremacy. The people, however, did not; and the Amendment to the Constitution was rejected. Good moral character was not yet to become another indirect manner of discriminating against the Negroes in the State.

Meanwhile, the State Legislature could continue to provide methods for discriminating against the Negro's effective exercise of the franchise in the laws which it passed governing primary elections. By an Act of 1950, the person offering to vote in the primary of a party could be made to swear that he intended to vote for the nominee of the party in the November general election, and that he had supported the party for the past two years, and that he was in accord with the principles of the party as declared by the State convention.[232] Again, there could be intimidation by challenge.

In 1952, the Mississippi Legislature passed a Constitutional Amendment, and submitted it to the people for ratification. This Amendment was designed to have a far-reaching effect on the future electorate of the State. It would stiffen the literacy test required of registrants and provide that in addition to being able to read any section of the State Constitution, the applicant would also have to write it and give a reasonable interpretation thereof. Also, the applicant would have to demonstrate to the registrar a

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[232] Bettersworth and Evans, *op. cit.*, p. 22.

reasonable understanding of the duties and obligations of citizenship. This amendment would give to the registrar complete discretionary power in deciding whether or not a person would qualify. The Amendment would in fact discriminate against Negroes, not only because of the power of the registrars, but also because the Negroes were given such an inferior education in the State. One has only to examine the statistics relating to State education. The newspaper comment on the amendment was extensive. Charles Hills in the *Clarion-Ledger* said, "Certainly, any person who could be classed even close to illiteracy would be hard put to pass an examination to vote under that Bill." [233] The *Delta Democrat-Times* in its lead editorial stated:

> "The new law presents two good points but contains a hidden gimmick that makes the proposition unpalatable to any fair-minded citizen.
>
> . . . And who is to be the judge of the "reasonableness" of all these new requirements, interpretations, and essays in citizenship? The county registrar. He has been and is the logical man, of course . . . , but this law puts an unusual burden on the decision of one man.
>
> We would not argue with the written application. That is a needed change. It would mean that the prospective voter has a record in the court house to show he has applied. If he is subsequently dealt with unfairly, there is some proof on hand to show when he made his first move to obtain voting rights. Again, the application is palpable proof that the person can read and write, and certainly literacy should be a requirement for any voter.

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[233] *Clarion-Ledger*, October 19, 1952, p. 4.

It is well too, that every citizen be able to understand our State Constitution and to know the duties and responsibilities of citizenship.

But every time we go to court we hear attorneys arguing on their varied interpretations of our laws. If even the attorneys find vagueness in our Constitution, about which there can be a clear difference of opinion, how is an ordinary if literate, layman to be expected to interpret them? And if he is articulate enough to explain the duties of a citizen, from his point of view, and to give his interpretation of our laws, how is he expected to satisfy or anticipate the opinion of the county registrar of voters?

What this amendment would in fact do is this: It would leave to the discretion of the county registrar, the full choice of who may vote and who may not. All he has to say is "Sorry, that's not reasonable to me," to disqualify anybody, black or white, from voting.

The law is obviously aimed at excluding segments of our population from voting.

It is not designed as a test of citizenship, because some of its requirements are not specific enough to be proved.

For all practical purposes, the law has never been enforced except against Negroes in the past. Do you know of any white person who has been asked to 'read or interpret' the Constitution as has been required all these years?

The new amendment is fashioned to make it even more difficult for qualified citizens to vote. Furthermore, it puts even greater powers in the hands of a county registrar. Do not believe that an unscrupulous registrar would not exercise his prerogative to prevent any-

one he desired disfranchised from voting. It could be your son or mine." [234]

The papers saw the amendment for what it was, another safeguard to protect white supremacy in Mississippi. The *Delta Democrat-Times* in another editorial emphasized what the Amendment was designed to do.

> "Why, if the lawmakers were sincere in wishing the voter qualifications of Mississippi voters raised, does it not apply to everyone? By the new law it would be years before many voters would be required to be literate.
>
> The truth is, as we suggested before, the new law is not designed to produce a more enlightened electorate so much as it is to exclude certain people and groups of people from voting. It was not until Negroes began voting in considerable numbers throughout the State that there was any pressure for a change in the voting qualifications from the Legislature. The sad aspect of this, besides the preconceived and deliberate attempt at injustice, is that such a law need not affect Negroes alone. It could affect any person or group of people. It is an interesting twist that a law that is copied from that of enlightened States could be used for unenlightened purposes.
>
> What the law would do would be to create an elite group of electors, those who are 'acceptable'; this elite group would include all who can already vote, and could easily exclude all others.
>
> It is not necessary to do anything further in the way of discrediting Mississippi before the eyes of the world.

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[234] *Delta Democrat-Times*, October 16, 1952, p. 4.

It is time for us to go in the other direction, to keep up with a changing world, rather than to try to turn back the clock."[235]

The Jackson *Clarion-Ledger* reported on November 4:

"The State Constitution written in 1890 required voters to be able to read but said nothing about writing. The proposed amendment would change the document to include that requirement.

Ed White of Homes County, State Legislator urging the adoption of the amendment, said 'the educational level of Mississippians has changed in the last sixty years to outdate the requirements.' Opponents of the amendment argue the new proposal is aimed at racial discrimination and leaves too much power with the registrar of voters."[236]

But what was the opinion of the public on this issue? The *Delta Democrat-Times* interviewed various people. Judge E. Harty, commenting on the amendment, said, "Personally I think it is already hard enough to get people to vote without doing anything to make it more difficult as this proposed amendment will do. Besides it puts too much power in one man—the County Registrars." A woman said, "Now as to this amendment which is being proposed. It's apt to be discriminatory. There's the biggest danger and thing that I fear most about the proposal." Ray Campbell, an attorney, said, "The truth of the matter is if the county registrar acted reasonably it will be all right." Ray Hanf said, "I think it's much too strict. Any voter of an organ-

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[235] *Id.*, Oct. 28, 1952, p. 4.

[236] *Clarion-Ledger*, Nov. 4, 1952.

[237] *Delta Democrat-Times*, Oct. 26, 1952, p. 7.

ization that has a constitution, either government or business, should understand that constitution. But at the same time, they rarely ever do. One thing that worries me is the fact that this new amendment would cut down on the potential voters, and not enough people go to the polls as it is." Mrs. V. A. Denslow commented, "I'll tell you. I believe in having voter qualification. I think it's right and proper. But I do think any amendment should apply to all voters—old and new alike. Why should it apply only to new voters?"

Such were the views of members of the electorate. The vote was taken in November; the mandate of the people declared the defeat of the amendment. The *Delta Democrat-Times* declared:

> "Whether by design or by accident the voters refused to bind prospective new voters with what could be administered as impossible restrictions. Whatever the reasons behind the omission they served a good purpose.
>
> Mississippi does need higher qualifications for voters, and a literacy clause. But the State does not need another vague law that would place unprovable prerequisites for voting at the discretion of county registrars." [238]

The people of Mississippi had not then seen fit to add an amendment with a very dubious purpose to their Constitution.

Mississippi had 22,404 Negro voters in 1954.[239] The percentage of registered Negro voters had risen from slightly

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[238] *Id.*, Nov. 7, 1952, p. 4.

[239] *Clarion-Ledger*, Nov. 2, 1954, p. 4.

over one percent in 1947 to about four percent of all adult Negroes. The state legislature again acted to combat the increase to safeguard the white supremacist position. It passed an amendment to Section 244 of the Constitution which was substantially the same as the 1952 amendment that had been defeated by the people. The amendment stated:

> "Section 244: Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.
>
> The person applying to register shall make sworn, written application for registration on a form to be prescribed by the State Board of Election Commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.
>
> Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this State prior to Jan. 1, 1954.

"The Legislature shall have the power to enforce the provisions of this section by appropriate legislation." [240]

The Legislature passed an act to submit this amendment to the people of the State for ratification in the November election. The amendment was clearly tied to the question of maintaining segregation and white supremacy in Mississippi. In the fall, emotions were heated on the issue of whether or not the people should vote to make the amendment part of the State Constitution, the fire having been fanned by the Supreme Court in *Brown* v. *Board of Education of Topeka*, 349 U. S. 294, the school integration case.

The *Delta Democrat-Times* said on October 10:

"If Mississippians go to the polls in any numbers November 2 it will be to vote on a constitutional amendment to increase the requirements of voter registration. The Legal Education-Advisory Committee is expected to give some attention to publicizing the amendment as a long-range method of keeping segregation. The proposal was designed to slow down Negro registrations and a number of committee members have said they feel any long-range success in keeping whites and Negroes separated lies in keeping whites in control of the ballot boxes." [241]

The *Jackson Clarion-Ledger* stated on October 18:

"... The qualifications to vote are the same as they were sixty-four years ago with the result that our qualifications are now among the lowest in the country.

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[240] Mississippi Constitution of 1890, Section 244, Laws 1954, ch. 427, 1955, ch. 133.

[241] *Delta Democrat-Times*, Oct. 10, 1954, p. 1.

> To advance the cause of good government in Mississippi, the Legislature at its regular 1954 session passed Senate Concurrent Resolution #13 to be voted on by the people at the general election . . . ."[212]

The dispute in the newspapers was over the issue of the amendment as a segregation measure. But it was not until immediately before the election that they levelled their barrages. In the meantime, various organizations in the State took sides either supporting or opposing the amendment. The labor organizations of the State condemned the proposed amendment as it related to changing the voter qualifications. The Mississippi Federation of Labor (A. F. L.) attacked the amendment:

> "Whereas, the Mississippi Constitution . . . has throughout the years specified the requirements relative to qualification of citizens to register and vote, and
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> Whereas throughout the years wisdom has dictated that such constitutional provisions not be tampered with, and
>
> Whereas, the citizens of Mississippi on November 4, 1952, by substantial vote refused to . . . tamper with said constitutional requirements.
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> Whereas, restriction of the right to vote because of lack of educational knowledge is not compatible with our American way of life, and
>
> Whereas, restraint on the ballot is a device of dictators, bent on the establishment of totalitarian states . . .
>
> Whereas, personal prejudice, or malice or pressure exerted on . . . circuit clerks by pressure groups could become a factor in preventing the registration of

[212] *Clarion-Ledger*, Oct. 18, 1954, p. 6.

numerous persons thereby limiting to the pleasure of the circuit clerk or of the pressure group exclusive control of all registered voters within their respective counties.

Therefore, be it resolved that the Mississippi State Federation of Labor go on record as opposing this proposed Constitutional amendment," [243]

The Jackson Daily News reported on November 1:

"The amendment would raise voting requirements and its proponents admit it is designed to check the increasing number of Negro ballots.

Belated opposition arose during the weekend to the amendment, which has the support of state leaders, from the Mississippi State Industrial Union Council (CIO) which charged the 'real purpose' behind the proposal was 'obscured behind a smoke screen of racial prejudice.'

The labor group charged that certain groups in the state are trying to 'take away the privilege of voting from large segments of the present and future citizens' of the state. J. D. Hanna of the CIO (President) explained that there is no permanent registration of voters in Mississippi, a situation which could declare some voters unqualified even though they had registered before January 1, 1954. 'County boards of supervisors can call for a new registration at any time,' he said." [244]

The labor unions opposed the amendment because it removed the right of the ballot from the "uneducated" group

[243] *Delta Democrat-Times*, Oct. 7, 1954, pp. 1-2.

[244] *Daily News*, Nov. 1, 1954, p. 8.

of citizens. They believed that the law was vague enough and the administrative discretionary power given the registrar sweeping enough to enable the qualifications to be used arbitrarily against any group when politicians considered it expedient to remove such an organization from the franchise. The Unions were aware of the ease with which this law might be used against organized labor in Mississippi.

The major organizations supporting the amendment were Mississippi's Citizens Councils which were dedicated to preserving racial segregation. Robert Patterson, executive secretary of the Councils said, "We must use and unite our ballot that the squeak of certain insidious minority pressure groups will be drowned out by our mighty roar." [245] He urged the council members to vote in the election for the Constitutional amendment, which would "raise voter qualifications," admitting that its "sole purpose is to limit Negro registration." [246] Patterson said that the Citizens' Councils have been formed to give support to the Legislature in its fight to keep segregation.[247] He added that the amendment would have passed two years ago had the voters known what they were voting for. "If our Councils do no other good they will be worthwhile if they inform the people what they are voting for", Patterson said.[248] The Attorney-General of the State commented on the amendment and the Council activity in the *Clarion-Ledger* of October 31:

> "Under the present set-up if a circuit clerk refuses to register a person who can read, then he is liable for damages in court for depriving that person of his right.

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[245] *Id.*, Oct. 28, 1954, p. 11.

[246] *Delta Democrat-Times*, Oct. 29, 1954, p. 2.

[247] *Jackson Daily News*, Oct. 29, 1954, p. 2.

[248] *Delta Democrat-Times*, Oct. 29, 1954, p. 2.

A clerk in Oklahoma got sued and had to pay $5,000. This has scared some of our clerks in Mississippi, and, as a result in several counties, the Negroes have been voting in large numbers.

In other words the only defense we now have is now crumbling and we need additional requirements that the clerks can legally impose. The time is short. The Citizens' Councils in each community are in a position to perform a great service for our cause if they assure the passage of this amendment." [249]

During the campaign for adoption of the 1954 amendment, the newspapers candidly reported the intention of the proposal. The *Clarion-Ledger*, a backer of the Amendment, in an October 31, editorial said:

"Adoption of this amendment, and fair and uniform application of the new voter-registration requirements, over the years would steadily increase the average educational qualifications and intelligence of our citizens.

It would also curb the registration of members of groups most likely to engage in 'bloc voting'.

And we believe that adoption of this amendment would, over a long period help win the fight to retain our separate school system and social institutions." [250]

By November 2, the purpose of the Amendment was being made even more obvious. On the amendments it said, ". . . and the second would tighten up voting requirements and discourage if not prevent further qualification of

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[249] *Clarion-Ledger*, Oct. 2, 1954, p. 20.

[250] *Id.*, Oct. 31, 1954, Section 4, p. 2.

Negroes for voting." [251] On the same day Charles Hill commented:

> "So you may well see that the Negro vote cannot—at this time make a great deal of difference in a statewide election unless held completely together as a minority group and used in a very close election.
>
> However, there is a steady uptrend of registrations by Negroes for the ballot. The Constitutional Amendment, which appears on the ballot Tuesday is supposed to be a guard against that." [252]

The Jackson *Daily News*, another supporter of the Amendment, was equally honest in its coverage.

> "Tuesday voters go to the polls to cast their ballots on a constitutional amendment that would in effect restrict the Negro vote by requiring a 'written interpretation of any portion of the state constitution,' and
>
> The amendment would raise voting requirements and its proponents admit it is designed to check the number of Negro ballots." [253]

It was made quite clear to the citizens of Mississippi that the constitutional amendment on which they would vote was specifically intended to prevent the Negro from qualifying for the franchise.

The newspapers on both sides of the issue encourage voters to exercise their right to vote. The *Delta Democrat-Times* considered the Amendment to be "overly complicated" and was of the opinion that an effort was "being

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[251] *Id.*, Nov. 2, 1954, p. 1.

[252] *Id.*, Nov. 2, 1954, p. 4.

[253] Jackson *Daily News*, Oct. 31, 1954, p. 11, and Nov. 1, 1954, p. 8.

made to control the electorate—to give a small and potentially powerful group of people prior power to decide who shall and who shall not vote. It is no step forward for Democracy. To the contrary."[254] The paper went on to urge:

"... the ballot is very important in another and vital respect. If the people do not vote, they may be allowing those who do vote to take away the right of future generations to vote.

Not to vote at all can mean that an amendment to the State Constitution will be passed which will put some mischief into voting qualifications.

The mischief may mean that if your son or daughter does not suit the county registrar when it comes his or her time to become a citizen, citizenship can be arbitrarily denied. And that's the way it will stay unless there is money to take the case through the Supreme Court.

The only reason this amendment failed to pass two years ago was that there was a general election of high interest at that time and not all the people who voted for the candidates bothered to vote for or against the amendment. Although the majority of people voting on the amendment voted for it, those who cast their ballots but did not vote on the issue were counted as votes against the amendment.

This time there is but one real issue to vote on—the voting qualification amendment. There is nothing else to distract from the issue. Those who go to the polls will be going principally to vote on this issue.

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[254] *Delta Democrat-Times*, Oct. 26, 1954, p. 4.

> Vote your convictions—but vote. If you fail to vote you will have no right to complain that Mississippi's laws are made which leave the door open for unjust treatment." [255]

The voters did turn out to vote on the issue of the Amendment.

The constitutional amendment was approved by the people. The *Clarion-Ledger* reported that "returns trickled in slowly both from the senatorial race and balloting on a pair of constitutional amendments, one designed to help retain segregation . . . The amendment is plainly aimed at Negro voters, and the provisions would not apply to those already qualified." [256] The paper commented:

> "Mississippi voters defeated a similar amendment just two years ago. Reasons for the shift in public opinion, resulting in approval of the amendment Tuesday, are too well known to need discussion. Chief among the recent events and developments inspiring this shift of public opinion was the United States Supreme Court's decision outlawing segregation in the public schools even where equal facilities existed.
>
> We believe that under existing conditions and prospects our people were wise to approve this amendment. It should be an effective weapon in the fight to retain segregation in and out of the schools." [257]

The *Delta Democrat-Times* concluded:

> "The work of the 'Citizens Councils' county organizations for maintaining segregation, was evident Tuesday in a vote on a Constitutional amendment to raise

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[255] *Id.*, Nov. 1, 1954, p. 4.

[256] *Clarion-Ledger*, Nov. 3, 1954, p. 1.

[257] *Id.*, Nov. 4, 1954, p. 20.

voter qualifications requirements. While the amendment, designed to check Negro registrations was approved in most counties the turnout was heaviest in counties with strong Councils." [258]

The Mississippi State Legislature inserted the amendment into the Constitution on January 26, 1955. In March the Legislature acted to implement the provisions of the amendment. There was an attempt made to disfranchise all those voters who had registered since January, 1954, but Attorney-General Coleman ruled that only registration since January 26, 1955 must be stricken since that was the date of the amendment's insertion into the Constitution. However, the implementing legislation ruled that the first date, January 1, 1954 was to be the date from which registration was stricken. Chapter 104 of the laws passed in the Extraordinary Session of 1955 required a written application for registration. The form which was adopted provoked a story which appeared in the *Delta Democrat-Times*. The story entitled, "Even a Lawyer Could Fail State's New Voter Test" stated:

> "An estimated 30,000 Mississippians have had their voter registrations nullified and the blunt truth is that county registrars will decide which ones will be allowed to re-register successfully.
>
> A written, three page exam which a Constitutional lawyer could flunk, if the circuit clerk wanted him to—awaits registrants from here on out . . .
>
> Some sections of the Constitution are clear in their meaning, but if the registrar wanted a particular person to fail the test he could point to any number of sections.

[258] *Delta Democrat-Times*, Nov. 7, 1954.

> As a clincher, the applicant is given space after Question 20 to write a 'statement setting forth your understanding of the duties and obligations of citizenship under a constitutional form of government.'
>
> There was a frank understanding among legislators that the test probably would not be used for white people, but that almost anyone could be made to flunk. And that's the way they want it." [259]

That newspaper, however, was not the only source of discontent after the appearance of the new registration forms. The *Clarion-Ledger* reported:

> "Mississippi circuit clerks will ask the Legislature Wednesday to repeal a bill which requires a written test for voter registration. In a meeting here Tuesday, the group said the bill 'creates an impossible situation —it is unfair to the clerks.' The clerks voted unanimously for the repeal of the bill." [260]

The Circuit Clerks wanted a bill which would require no written test or application. Their main objections to the present bill were:

1. The physical impossibility of registering voters while maintaining the existing office force.
2. In a few weeks the new application for registration will be public information. The clerks believed that Negroes can then 'memorize' answers.
3. The new application is too involved. People won't vote if they have to go to so much trouble.
4. It puts too much power in the hands of one man (the clerk).

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[259] *Id.*, March 27, 1955, p. 1.

[260] *Clarion-Ledger*, March 30, 1955, p. 3.

5. In civil rights suits, it would 'pinpoint' the circuit clerk. The whole burden of responsibility rests on the clerk.

6. The bill makes no provision for registration by absentee ballot. Men away from home in the armed forces couldn't vote.[261]

There were Legislators who lamented what they had done. One said, "This is too complicated. If I wasn't already registered, I don't believe I could qualify to vote myself." [262] Another said, "The people are now against the Constitutional amendment. They are sorry they voted for it and never would have if they understood it. The people were told that the amendment would solve the segregation problem. They were misled." In any case, the bill stood. It did discriminate against the Negro, and it was applied in a discriminatory fashion. But some of the white citizens of the State were disillusioned so that they felt that they would have to make a further effort to keep the Negro from getting the exercise of the ballot.

In 1958 the Mississippi Legislature acted to enable whites of the State to maintain their political supremacy even more easily. The process for amending the State Constitution was eased so that sweeping constitutional reforms could be made by amendment rather than by convention. This change would enable the State to meet more quickly any challenge or threat to its separate institutions.

The franchise article of the Mississippi Constitution was again amended in 1960. Chapter 550 of the Mississippi laws of 1960 sent to the people for ratification in the November election the following amendment to Article 12 (Franchise), Section 241:

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[261] *Ibid.*

[262] *Id.*, p. 7.

"In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.

The Legislature shall have the power to enforce the provision of this section by appropriate legislation."

Again the Legislature had proposed making a requirement for the franchise a qualification which was vague and indefinite on its face. It was one that could be easily susceptible to discriminatory administration. Obviously the amendment was intended to be another weapon to be used in keeping the Negro from the ballot.

The immediate reaction in the newspapers to the proposed amendment was that it was another segregation measure. On June 8, the *Clarion-Ledger* said of the amendment, along with several others which had been submitted, "Apparently both are aimed at maintaining segregation." [263] The *Delta Democrat-Times* reported:

"A proposed Mississippi voter registration requirement that a person must be of 'good moral character' has been labeled as 'clearly unconstitutional' by the Civil Rights Commission. (Rev. Cox)

The circuit clerk, who registers voters, would be the judge of character. Rev. M. Cox of Gulfport; Chairman of the State Advisory Committee to the Commission, said at the group's monthly meeting Wednesday that he had received a letter from the Civil Rights Commission, saying that the Legislature's adoption of a morality voter requirement 'has really raised some eyebrows among the Civil Rights Staff.'

[263] *Id.*, June 8, 1960, p. 8.

> Retired Admiral R. Briscoe of Liberty, a Committee Member, said the proposal doesn't 'define what the limits of morality are.' He said the requirement would give registrars 'an alibi' in excluding Negro voters." [264]

This was indeed the avowed intent of the proponents of the Amendment.

During the campaign for the adoption of this new amendment the newspapers candidly reported the intention of the proposal as they had done in the campaign of 1954. It was said in the *Delta Democrat-Times*:

> "The Mississippi Labor Council, AFL-CIO, charged today three proposed amendments to the Mississippi Constitution are 'vicious attacks on democracy'. The Council, in announcing the first public opposition to the amendments to be submitted to the voters November 8, said it is always against attempts 'by various groups or elements in their abortive efforts to undermine or subvert our democracy.' Its opposition was announced a few hours after Gov. Ross Barnett issued a statement calling for approval of the amendments to help 'protect our way of life.'
>
> A measure to require that voters have 'good moral character' as judged by circuit clerks is 'loaded with nitroglycerin for anyone in any walk of life,' the Council said. 'Few men have the same views on morals.'
>
> It said Mississippi presently 'has the most rigid voter qualification laws of any of the fifty states' and that 'the need is obviously for a liberalization of the laws—not further restrictions.'
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> Governor Barnett took note of the absence of public opposition at the time of his statement late Monday.

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[264] *Delta Democrat-Times*, June 16, 1960, p. 1.

But he said he hopes voters will give 'such strong endorsement of these proposals that there will remain no doubt as to Mississippi's position on these vital matters.

'Generally, the amendments being submitted for ratification by the people were drawn to strengthen the state's position of segregation . . . and give more quality and importance to the ballot of the individual,' " said Barnett.[265]

John Emmerich of the McComb *Enterprise Journal* tried to express the peculiarity of the existing situation when he said:

"But today Mississippians have been maneuvered into the position of arguing against and bitterly fighting those who want to extend to all citizens of America, Negroes included, the civil right guaranteed by the Constitution. Take the matter of the right to vote. Anyone who believes in the American Constitution knows that document guarantees the right to vote to all qualified citizens regardless of race.

But today, Mississippians in reacting to the assaults on our traditions have to attempt to defend their position of denying the right to vote to many Negroes who, by every measure are qualified to vote.

"There are white Mississippians . . . who contend that Negroes haven't yet earned the right to vote. Yet the Constitution which we embrace does not say that a group of people, as a class, have to earn 'the right' before they can vote.

It specifically says that all individual citizens who are qualified—regardless of their race—are guaranteed the

[265] *Id.*, Oct. 25, 1960.

franchise. It is also interesting to observe that many of the white Mississippians who are loudest in their demands that the Negroes must earn the right to vote before they can do so also are the quickest to criticize any Negro who appears to rise above his station. The former attitude, of course, is inconsistent with the latter.

But when nerves are frayed and better judgment is unheeded in emotional situations, watch out for unwise decisions. Unfortunately Mississippi today, finds herself in a position much like that one." [266]

This is the moral dilemma in which the state embroiled itself: Right, justice, and principle were combating segregation, white supremacy, and tradition. Newspapers aligned for or against the "good moral character amendment". The *Delta Democrat-Times* almost stood alone against the vast majority of the papers in the State. On October 28, this paper came out most strongly against the amendment, for "its adoption would mean that one man would have the authority to give or deny the right to vote to anyone he chooses." [267]

Meanwhile the Citizens Council newspaper urged voters to "safeguard Mississippi from the black bloc vote" by approving on November 8, the proposed amendment which would require registrants to be of good moral character. The editorial said the proposed amendment, one of five which was to be voted on in the election, would help "protect Mississippi ballot boxes from the self-seeking forays of bloc voting pressure groups" and discourage mass registration efforts on the part of irresponsible and immoral elements. [268] The one side would admit what the proposed

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[266] *Id.*, p. 4.

[267] *Id.*, Oct. 28, 1960, p. 4.

[268] *Id.*, Oct. 31, 1960, p. 1.

amendment would accomplish and would support it for that reason. The other side would discuss what the amendment was designed to do and attack it on that basis. Emmerich of the McComb *Enterprise-Journal* attacked the amendment on the basis of the way in which it would be applied. "And what does constitute a lack of good moral character? . . . If (the provision) were interpreted strictly, I don't think very many of us would meet the qualifications." The purpose of the amendment, according to Emmerich, was "an ill disguised attempt to keep qualified Mississippi Negroes from voting."[269] At the same time, the *Clarion-Ledger* supported the amendment believing that it was designed to safeguard segregation, something which also would not be abused by the circuit clerks.[270]

Bitterness and sarcasm were not uncommon. Even the *Delta Democrat-Times* said, "The Mississippi legislature can sometimes be compared to the well-known Pavlovian dog, which when a bell rang, would run out and slobber through reflex action. Anytime the word segregation is mentioned, an overwhelming majority of the Legislators promptly take leave of their faculties and blindly react."[271] The voters did march to the polls in lockstep to vote for the amendment, and on November 8, 1960 the good moral character requirement was added to the state constitution by an almost three to one majority.

The Mississippi Legislature did not see fit to pass legislation to implement this constitutional provision until 1962, when there were approximately 26,000 registered Negro voters, about 6.1% of the adult Negro population of the State.[272] Then in the regular session of the State Legislature of 1962, the following bills were passed to further this

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[269] *Ibid.*, p. 4.

[270] *Clarion-Ledger*, 1 Nov., 1960, p. 6.

[271] *Delta Democrat-Times*, 6 Nov., 1960, p. 4.

[272] *Commission on Civil Rights Report*. Voting, p. 277.

amendment: House Bills No. 899, No. 903, No. 904, No. 905, and No. 822.

House Bill No. 899 was enacted to enforce the new provision and added to the general registration provisions of Section 3235 *Miss. Code*, 1941, as amended, that any person registering after the effective date of the Act must be of good moral character. Apparently, this qualification must be met by persons who had previously been registered voters in Mississippi and are now, for one reason or another, re-registering. Thus it would seem difficult to argue that the enforcement statute creates a "grandfather" clause. Probably the "grandfather" clause was omitted because the qualification is a simple and vague one, which could be met by any white. Nevertheless it would be quite possible to use this law against the white labor unions in this State. Indeed, the AFL-CIO has denounced this law on these grounds. House Bill No. 900 adds nothing new. It simply repeats the work of No. 899 by tacking the good moral character provision on to Section 1, Chapter 104, Laws of 1955, Extraordinary Session, which is the literacy test provision.

House Bill No. 903 provides that if the applicant passes all other qualifications but fails to "demonstrate to the registrar that he is of good moral character", the registrar must endorse the application, "failed" and state on it the "facts or reasons why he finds the applicant not to be of good moral character." If the applicant fails for some other reason, the registrar need not specify the reason. If the applicant is not of good moral character and also fails some other requirement, the registrar, may, if he wishes, specify that the applicant is not of good moral character and state his reasons. Apparently, by the wording of this Bill, the burden of proving good moral character is placed on the applicant. It is difficult to see how anyone could sustain such a burden of proof except through the grace of the registrar. No standards have been given to the

registrars as a guide to the administration of this law. On the contrary it would seem that the registrars have been given naked and arbitrary discretion in the performance of their duties. House Bill No. 905 is not of great importance. Still it does tack the good moral character provision on to Section 1, Chapter 449, Laws of 1960 and Section 1, Chapter 99, and Section 5, Chapter 102, which deal with the form of registration application and record books. It adds the good moral character requirement to the application form, Section 5, paragraph 3, makes clear that, although other new qualifications do not apply to persons registered before January 1, 1954, the good moral character provision has no "grandfather" clause and applies to all applicants, even though they have been previously registered.

Finally House Bills No. 822 and No. 904 add a new dimension to the good moral character provision. While the provision itself provides an arbitrary discretion to the registrar, these two bills establish a vicious mechanism for the intimidation of potential voters. This allows private individuals to act by themselves or in conspiracy with the registrar to intimidate potential voters. The bills provide that after an application for registration is received and within ten days, the registrar shall publish the name and address of the applicant in a local newspaper once a week for two weeks. Within two weeks after the last publication, any other registered voter in the county may file an affidavit challenging the good moral character of the applicant. If no challenge is filed, the registrar must himself determine the moral character of the applicant and either pass or fail him. Thus even if no challenge is made, the effect of these laws is to make known to all whites in the county the name of the Negro who has tried to register. It also provides for a delay in registration of thirty-eight days. If a challenge is filed, the registrar sets a time for a hearing and after considering all the witnesses and evidence presented, makes

his finding and states his reasons on the application. The registrar's verdict may be appealed to the Board of Election Commissioners. Of course, it is patently obvious, that in most rural Mississippi communities, this law will rarely be used to challenge the good moral character of the prospective Negro voter. Rather knowing that his name will be published in a local newspaper, the Negro will not even attempt to register to vote. Even if he does attempt to register, the potential for economic, psychological, and even physical coercion is made far more easy by this law.

In the end, it would seem that both the present and the past structure of the Mississippi voting laws are best described by the following quotation:

> "Whether judgment be based on voting turnout or the range of constitutional and statutory restrictions, Mississippi is a state of limited franchise . . . Another question necessarily connected with the preceding ones is whether the State proposes to discriminate against Negroes either by Constitutional provision or by discriminatory administration of election laws. Either method is a violation of the Fourteenth and Fifteenth Amendments to the National Constitution if the discrimination can be proved to the satisfaction of the courts . . . The substitute for outright discrimination is the proliferation of restrictive requirements. . . .
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> The pattern of restrictive requirements which has just been described is more extreme than that of any of the other forty-nine states. It is the only Southern State with a combination of 'understanding', literacy, poll tax, and two year residence requirements." [273]

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[273] Hobbs, E. H. (editor) *Yesterday's Constitution Today: An Analysis of the Mississippi Constitution of 1890*. State Adm. Series #19, Bursar of Public Administration, University, Miss., 1960. "Suffrage and Elections," by Barret, R.